# ONTARIO
# LABOUR RELATIONS BOARD
# REPORTS

## November/December 2011

Ontario

# ONTARIO LABOUR RELATIONS BOARD

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**A Bimonthly Series of Decisions from the**
**Ontario Labour Relations Board**

**Cited [2011] OLRB REP. NOVEMBER/DECEMBER**

**EDITORS: VOY STELMASZYNSKI**
**LEONARD MARVY**

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THE CORPORATION OF THE TOWN OF RICHMOND HILL; RE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA LOCAL 58; RE CUPE AND ITS LOCAL 905 .......... 745

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FIRST DISTRICT CANADA; IBEW; RE IBEW, LOCAL 1739; RE IBEW, LOCAL 353 .......... 752

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Bargaining Unit – Delay – Duty of Fair Representation – Employee – Fellows had been working in the position of 'Project Manager' although he continued to 'work on the tools' – Ainsworth paid remittances on behalf of Fellows who paid dues as a member of the Union – Fellows was reassigned as a 'working foreman' and, as a result, he chose to end his employment with Ainsworth claiming he had been constructively dismissed – This consolidated application followed a ruling of the Superior Court which stayed the constructive dismissal action pending a determination of whether Fellows was covered by the collective agreement, an issue the court deemed was beyond its jurisdiction – In this application the Union sought a determination under s.114(2) of the Act to determine whether Fellows was an 'employee' within the meaning of the Act and Fellows sought a declaration that the Union had violated s.74 – Ainsworth sought to have both matters dismissed due to delay as both parties previously knew or ought to have known there was an issue regarding Fellows' bargaining unit status which ought to have been grieved – Ainsworth also argued the Board lacked jurisdiction to determine whether Fellows was in the bargaining unit because that determination must be made by an arbitrator, not the Board – Respecting the delay issue the Board was of the view both parties acted promptly once the issue concerning status was crystallized by the ruling of the Superior Court – On the jurisdictional issue the Board noted a Union could only violate its duty of fair representation under s.74 to a member in the bargaining unit, that is, a complainant must be in the bargaining for the duty to be owed – The Board held it had the power and the obligation under s.114(1) to determine whether Fellows is an 'employee' under the Act and under s. 74 to determine whether Fellows was a member of the bargaining unit – Parties ordered to file statements of fact – Matter continues by way of consultation

AINSWORTH INC.; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 AND GARETH FELLOWS ........................................ 692

Certification – Constitutional Law – Construction Industry – The Labourers sought to certify a unit of construction workers employed by the Nipissing First Nation – The NFN responded with an assertion that the work was federally regulated – The Board examined the structure, hierarchy and reporting responsibilities of the NFN and agreed that the First Nation, when engaging workers in construction for the sole benefit of the reserve (in accordance with its delegated jurisdiction under the *Indian Act*, its by-laws, vision and mission), was federally regulated – Canvassing case law from several provincial labour boards, Courts of Appeal and the Supreme Court of Canada, the Board held that when the reserve employees performed construction work for the benefit of the reserve alone, they were engaged in the core function of reserve governance – First, the work is performed on the reserve, under the direction of the band council, for the collective benefit of band members residing on the reserve – Secondly, the *Indian Act* specifically delegates to the NFN the responsibility for intra-reserve maintenance of roads, bridges, etc., the expenditure of capital moneys for same, as well as the power to make by-laws with respect to such construction and maintenance – Finally, the work is completely integrated with other work done by the NFN within its governance function – Application dismissed

NIPISSING FIRST NATION; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE UNION OF ONTARIO INDIANS ........................................ 835

Certification – Construction Industry – Employer – Judicial Review – The union sought judicial review of a Board decision that dismissed the union's application for certification when the union identified the incorrect employer as responding party – The Court found that the Board's finding was reasonable: the Board did not allow labour relations reality to be trumped by commercial form nor eclipsed by employer intentions; the Board's speculation on who the actual employer might be was not a finding of fact; while a finding of who the employer was might have been useful to the union, there was no obligation on the Board to make such a finding – Finally, there was no denial of natural justice – Application for judicial review dismissed

SNC-LAVALIN INC., SNC-LAVALIN GROUP INC. AND SNC-LAVALIN POWER ONTARIO INC. AND OLRB; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL ........................................ 952

Certification – Construction Industry – Status – In this card-based application for certification, the parties had agreed some of the disputed employees had been dispatched to the work site by the employer and/or the union while others were hired locally – The employer was applying the terms of a pre-existing collective agreement and argued that all of the employees were already covered by the cross–over provisions of that agreement – Since employees can only be in one bargaining unit at a time, they should not be able to vote to determine the bargaining agent in a different bargaining unit – The Union's position was that the employees were not covered by any collective agreement when working in that particular Board area and therefore the cross–over clause did not, and could not, create bargaining rights for them – The Union further argued that the application of the terms of another collective agreement to these employees did not equate to the Union having acquired bargaining rights – The Board held the dispatched employees were bound by the cross–over provisions of the existing collective agreement and their membership evidence was to be excluded – The employer was not obligated to apply the terms of the existing collective agreement to the locally hired employees and therefore these employees were eligible to vote – Matter continues

BRENNAN PAVING & CONSTRUCTION LTD.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL ........................................................................ 720

Certification Where Act Contravened – Construction Industry – Intimidation and Coercion – Remedy – The Board found that the employer was influenced by his knowledge of union activity among his crew when he failed to return them to work following a work stoppage beyond their control – When he spoke to employees individually, the employer sought to confirm that the employees had been in touch with the union, and asserted to the employees that they had quit their jobs and signed with the union – On the issue of remedy, the Board looked at allegations of employer support for the union, and options available to the Board in light of the union's inability to demonstrate an appearance of minimum employee support to warrant the holding of a vote – The Board found that the senior employee who contacted the union did so after he had severed his relationship with the employer; that is, he was acting on his own initiative against the employer's interests (and in support of the employees' interest) – The Board observed that since the union was unable to demonstrate 40% support on the date of application, no vote was ordered when the application for certification was first filed – Now, having found that the employer contravened the Act by threatening the job security of its employees and even terminating the employment of the original crew, and having determined that the union was unable to garner any additional support for its campaign, the Board decided that ordering a representation vote would be meaningless – No remedy short of remedial certification is sufficient to counter the employer's actions – Certificate ordered

VANDERWAL HOMES & COMMERCIAL GROUP; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946................................. 906

Certification Where Act Contravened – Intimidation and Coercion – Interference with Trade Union – Application for certification brought without the requisite membership support – The applicant alleged that the employer engaged in conduct to intimidate the employees, interfere with the rights of the employees and interfere with the selection of the union – The union relied on three meetings held during the organizing drive – Two of these meetings were held by the president of the employer, who told the employees that he would not let anyone destroy the company, that subcontractors were available to do the work of the employees, and that if they were going to destroy the company, they should find work elsewhere – The Board found these two meetings to be a direct response to the employer discovering the union drive: these were captive audience meetings and the conduct of the company in those meetings was coercive, intimidating and threatening in a manner that would impair the ability of employees of average intelligence and fortitude to freely express their wishes to be unionized – The Board was not satisfied that the third meeting, held by a senior employee, was an action on behalf of the employer; however, the Board concluded that this meeting was an example of the impact of the earlier anti-union meetings in that employees would conclude that it was acceptable to use the company's premises, hold back employees from their work assignments, and lecture them against unionization – Ultimately, the Board found the union was unable to demonstrate that it had continued its organizing efforts after the violations of the Act occurred – There had been a five week gap between the last card signed and the captive audience meetings – Remedial certification will only be considered where the union is able to show a causal relationship between the employer's unfair labour practice activity and the union's inability to achieve support at the time the application was filed – Declaration granted – Application for certification dismissed

ALPINE CONSTRUCTION (WINDSOR) INC.; RE LIUNA, LOCAL 625...................... 703

Constitutional Law – Certification – Construction Industry – The Labourers sought to certify a unit of construction workers employed by the Nipissing First Nation – The NFN responded with an assertion that the work was federally regulated – The Board examined the structure, hierarchy and reporting responsibilities of the NFN and agreed that the First Nation, when engaging workers in construction for the sole benefit of the reserve (in accordance with its delegated jurisdiction under the *Indian Act*, its by-laws, vision and mission), was federally regulated – Canvassing case law from several provincial labour boards, Courts of Appeal and the Supreme Court of Canada, the Board held that when the reserve employees performed construction work for the benefit of the reserve alone, they were engaged in the core function of reserve governance – First, the work is performed on the reserve, under the direction of the band council, for the collective benefit of band members residing on the reserve – Secondly, the *Indian Act* specifically delegates to the NFN the responsibility for intra-reserve maintenance of roads, bridges, etc., the expenditure of capital moneys for same, as well as the power to make by-laws with respect to such construction and maintenance – Finally, the work is completely integrated with other work done by the NFN within its governance function – Application dismissed

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VANDERWAL HOMES & COMMERCIAL GROUP; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946.................................... 906

Construction Industry Grievance – In upholding a five-day suspension for threatening to kill his foreman, the Board stated that when an event that fits squarely within the definition of workplace violence occurs, an employer is not only permitted but required to act, both to deal with the unacceptable behaviour and to take steps to ensure that its policies are known and understood – In considering discipline in the context of workplace violence, the issue of general deterrence takes on a more prominent role than it might in some other circumstances and nothing will undermine all of the policies and information sessions for employees as quickly as tolerance for an actual incident of workplace violence – The Board found no reason to reduce the penalty: the statement was not said as a "joke" and it was repeated calmly the next day; there was no apology and the grievor believed he was justified in making his statement – Grievance dismissed

TESTON PIPELINES LIMITED; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183........................................................................................................ 857

Delay – Bargaining Unit – Duty of Fair Representation – Employee – Fellows had been working in the position of 'Project Manager' although he continued to 'work on the tools' – Ainsworth paid remittances on behalf of Fellows who paid dues as a member of the Union – Fellows was reassigned as a 'working foreman' and, as a result, he chose to end his employment with Ainsworth claiming he had been constructively dismissed – This consolidated application followed a ruling of the Superior Court which stayed the constructive dismissal action pending a determination of whether Fellows was covered by the collective agreement, an issue the court deemed was beyond its jurisdiction – In this application the Union sought a determination under s.114(2) of the Act to determine whether Fellows was an 'employee' within the meaning of the Act and Fellows sought a declaration that the Union had violated s.74 – Ainsworth sought to have both matters dismissed due to delay as both parties previously knew or ought to have known there was an issue regarding Fellows' bargaining unit status which ought to have been grieved – Ainsworth also argued the Board lacked jurisdiction to determine whether Fellows was in the bargaining unit because that determination must be made by an arbitrator, not the Board – Respecting the delay issue the Board was of the view both parties acted promptly once the issue concerning status was crystallized by the ruling of the Superior Court – On the jurisdictional issue the Board noted a Union could only violate its duty of fair representation under s.74 to a member in the bargaining unit, that is, a complainant must be in the bargaining for the duty to be owed – The Board held it had the power and the obligation under s.114(1) to determine whether Fellows is an 'employee' under the Act and under s. 74 to determine whether Fellows was a member of the bargaining unit – Parties ordered to file statements of fact – Matter continues by way of consultation

AINSWORTH INC.; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 AND GARETH FELLOWS ................................................ 692

Duty of Fair Representation – Bargaining Unit – Delay – Employee – Fellows had been working in the position of 'Project Manager' although he continued to 'work on the tools' – Ainsworth paid remittances on behalf of Fellows who paid dues as a member of the Union – Fellows was reassigned as a 'working foreman' and, as a result, he chose to end his employment with Ainsworth claiming he had been constructively dismissed – This consolidated application followed a ruling of the Superior Court which stayed the constructive dismissal action pending a determination of whether Fellows was covered by the collective agreement, an issue the court deemed was beyond its jurisdiction – In this application the Union sought a determination under s.114(2) of the Act to determine whether Fellows was an 'employee' within the meaning of the Act and Fellows sought a declaration that the Union had violated s.74 – Ainsworth sought to have both matters dismissed due to delay as both parties previously knew or ought to have known there was an issue regarding Fellows' bargaining unit status which ought to have been grieved – Ainsworth also argued the Board lacked jurisdiction to determine whether Fellows was in the bargaining unit because that determination must be made by an arbitrator, not the Board – Respecting the delay issue the Board was of the view both parties acted promptly once the issue concerning status was crystallized by the ruling of the Superior Court – On the jurisdictional issue the Board noted a Union could only violate its duty of fair representation under s.74 to a member in the bargaining unit, that is, a complainant must be in the bargaining for the duty to be owed – The Board held it had the power and the obligation under s.114(1) to determine whether Fellows is an 'employee' under the Act and under s. 74 to determine whether Fellows was a member of the bargaining unit – Parties ordered to file statements of fact – Matter continues by way of consultation

AINSWORTH INC.; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 AND GARETH FELLOWS ................................................ 692

Duty to Bargain in Good Faith – Health and Safety – Strike – Unfair Labour Practice – The Union alleged improper and unlawful surveillance of their occupational health and safety representative and filed applications under s. 50 of the OHSA and s. 96 of the LRA alleging violations of sections 70, 72 and 76 – The employer alleged the union unlawfully disrupted operations by engaging in a public smearing campaign, by turning down overtime shifts, by engaging in illegal strike activity, and by unlawfully disclosing what transpired during negotiations of the collective agreement – The employer filed applications under s. 100 and 96 of the LRA alleging violations of sections 17, 71, 76, 81 and 83 – This decision dealt with preliminary motions brought by both parties to dismiss the other parties' complaints without a hearing – The employer argued that the union's application ought to be dismissed because of: undue delay; failure to make out a prima facie case; an abuse of process; a personal attack which amounted to bargaining in bad faith; and no sound labour relations purpose for the Board to inquire into the application – The Board was not prepared to dismiss the application based on the delay argument stating once the event was crystallized the delay only amounted to seven months and the employer did not suffer significant prejudice – The Board, relying on the factors in *Wal-Mart Canada*, determined there was no real labour relations purpose to be served by continuing to litigate the complaints – The alleged surveillance took place three years ago and had no discernible impact on either party and the underlying surveillance issue had been resolved in a collective agreement which was midway through its term – In these circumstances, on the consent of the employer, the Board also dismissed the employer's complaints – Applications dismissed

TORONTO HYDRO-ELECTRIC SYSTEM LTD.; RE CUPE, LOCAL ONE AND JOHN CAMILLERI .................................................................................................... 867

Employee – Bargaining Unit – Delay – Duty of Fair Representation – Fellows had been working in the position of 'Project Manager' although he continued to 'work on the tools' – Ainsworth paid remittances on behalf of Fellows who paid dues as a member of the Union – Fellows was reassigned as a 'working foreman' and, as a result, he chose to end his employment with Ainsworth claiming he had been constructively dismissed – This consolidated application followed a ruling of the Superior Court which stayed the constructive dismissal action pending a determination of whether Fellows was covered by the collective agreement, an issue the court deemed was beyond its jurisdiction – In this application the Union sought a determination under s.114(2) of the Act to determine whether Fellows was an 'employee' within the meaning of the Act and Fellows sought a declaration that the Union had violated s.74 – Ainsworth sought to have both matters dismissed due to delay as both parties previously knew or ought to have known there was an issue regarding Fellows' bargaining unit status which ought to have been grieved – Ainsworth also argued the Board lacked jurisdiction to determine whether Fellows was in the bargaining unit because that determination must be made by an arbitrator, not the Board – Respecting the delay issue the Board was of the view both parties acted promptly once the issue concerning status was crystallized by the ruling of the Superior Court – On the jurisdictional issue the Board noted a Union could only violate its duty of fair representation under s.74 to a member in the bargaining unit, that is, a complainant must be in the bargaining for the duty to be owed – The Board held it had the power and the obligation under s.114(1) to determine whether Fellows is an 'employee' under the Act and under s. 74 to determine whether Fellows was a member of the bargaining unit – Parties ordered to file statements of fact – Matter continues by way of consultation

AINSWORTH INC.; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 AND GARETH FELLOWS ...................................................... 692

Employee – Employment Standards – Reprisal – In cross-appeals of three decisions of an ESO, the threshold issue was whether the employees were holders of "religious office" and therefore excluded from the protections of the *Employment Standards Act* by virtue of s. 3(5)7 – The employer is a not for profit organization which exists to guide the observance of Orthodox Jewish Kosher dietary laws in Canada; the employees worked as 'Mashgiachim' kosher food inspectors – The Board held that while the 'Mashgiachim' is a religious position that does not determine whether these specific employees held a religious 'office' – There must be more to be a religious 'office holder' than mere characterization of such or that the functions or work that individual performs are significant or important to fulfill religious obligation or ritual – No evidence was tendered that the employees in question had any specific education, training, certification, or qualifications other than passing an interview and being Shomer Shabbat – Looking at other exemptions to provide context, the Board found that the essential feature of the holder of an 'office' is independence – The employees in this case did not have any greater independence than other non-religious food inspectors – The relationship in this case resembled a traditional employer/employee relationship; the exemptions are to be construed narrowly – The Board held the employees were not religious office holders and therefore not exempt – Matter continues

KASHRUTH COUNCIL OF CANADA/LE CONSEIL CACHEROUT DU CANADA; RE MORLEY RAND, MICHAEL RAND AND DIRECTOR OF EMPLOYMENT STANDARDS .......... 820

Employer – Certification – Construction Industry – Judicial Review – The union sought judicial review of a Board decision that dismissed the union's application for certification when the union identified the incorrect employer as responding party – The Court found that the Board's finding was reasonable: the Board did not allow labour relations reality to be trumped by commercial form nor eclipsed by employer intentions; the Board's speculation on who the actual employer might be was not a finding of fact; while a finding of who the employer was might have been useful to the union, there was no obligation on the Board to make such a finding – Finally, there was no denial of natural justice – Application for judicial review dismissed

SNC-LAVALIN INC., SNC-LAVALIN GROUP INC. AND SNC-LAVALIN POWER ONTARIO INC. AND OLRB; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL .......... 952

Employer – Interim Relief – Unfair Labour Practice – In this interim reinstatement application the three named responding parties argued that a temporary employee agency was the employer and consequently the Board had no jurisdiction to issue an interim order against the responding parties – The Board found that the three responding parties were the employer for the purposes of the s. 98 application, and therefore it did not have to address the jurisdictional argument – In doing so, the Board made clear that the determination was for the purposes of the s. 98 only, not for the pending unfair labour practice or the application for certification – In reaching the conclusion that the three named entities were the employer for the interim relief application, the Board specifically rejected the argument made by the temporary employee agency that s. 74.3 of the *Employment Standards Act, 2000* rendered it the employer for the purposes of the Act – The Board reiterated a point most recently reviewed in *Alpine Construction (Windsor) Inc.* that the impact upon employees of a breach of the Act by an employer is to be determined on the basis of an assessment of objective facts rather than the subjective views of employees – Thus, the failure of the union to provide declarations from employees who said that they were chilled was not fatal to the application – Interim relief granted (one of two employees reinstated)

180 UNIVERSITY MANAGEMENT INC. AND/OR WESTBANK PROJECTS CORP. AND/OR PETERSON INVESTMENT GROUP INC., PETERSON INVESTMENT (SPRUCELAND) LTD.; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183; RE MITCHISON ARTS AND LBM CONSTRUCTION SPECIALTIES; RE HUNT

MANAGEMENT GROUPE SYNERGIE INC. CARRYING ON BUSINESS AS HUNT PERSONNEL .......... 671

Employment Standards – Employee – Reprisal – In cross-appeals of three decisions of an ESO, the threshold issue was whether the employees were holders of "religious office" and therefore excluded from the protections of the *Employment Standards Act* by virtue of s. 3(5)7 – The employer is a not for profit organization which exists to guide the observance of Orthodox Jewish Kosher dietary laws in Canada; the employees worked as 'Mashgiachim' kosher food inspectors – The Board held that while the 'Mashgiachim' is a religious position that does not determine whether these specific employees held a religious 'office' – There must be more to be a religious 'office holder' than mere characterization of such or that the functions or work that individual performs are significant or important to fulfill religious obligation or ritual – No evidence was tendered that the employees in question had any specific education, training, certification, or qualifications other than passing an interview and being Shomer Shabbat – Looking at other exemptions to provide context, the Board found that the essential feature of the holder of an 'office' is independence – The employees in this case did not have any greater independence than other non-religious food inspectors – The relationship in this case resembled a traditional employer/employee relationship; the exemptions are to be construed narrowly – The Board held the employees were not religious office holders and therefore not exempt – Matter continues

KASHRUTH COUNCIL OF CANADA/LE CONSEIL CACHEROUT DU CANADA; RE MORLEY RAND, MICHAEL RAND AND DIRECTOR OF EMPLOYMENT STANDARDS .......... 820

Final Offer Vote – First Contract Arbitration – Judicial Review – Natural Justice – Intervenor – One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed

RAINBOW CONCRETE; RE MARK CORNER; RE ONTARIO (MINISTER OF LABOUR), OLRB, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 .......... 934

First Contract Arbitration – Final Offer Vote – Judicial Review – Natural Justice – Intervenor – One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were

unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed

RAINBOW CONCRETE; RE MARK CORNER; RE ONTARIO (MINISTER OF LABOUR), OLRB, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 .......... 934

Health and Safety – Duty to Bargain in Good Faith – Strike – Unfair Labour Practice – The Union alleged improper and unlawful surveillance of their occupational health and safety representative and filed applications under s. 50 of the OHSA and s. 96 of the LRA alleging violations of sections 70, 72 and 76 – The employer alleged the union unlawfully disrupted operations by engaging in a public smearing campaign, by turning down overtime shifts, by engaging in illegal strike activity, and by unlawfully disclosing what transpired during negotiations of the collective agreement – The employer filed applications under s. 100 and 96 of the LRA alleging violations of sections 17, 71, 76, 81 and 83 – This decision dealt with preliminary motions brought by both parties to dismiss the other parties' complaints without a hearing – The employer argued that the union's application ought to be dismissed because of: undue delay; failure to make out a prima facie case; an abuse of process; a personal attack which amounted to bargaining in bad faith; and no sound labour relations purpose for the Board to inquire into the application – The Board was not prepared to dismiss the application based on the delay argument stating once the event was crystallized the delay only amounted to seven months and the employer did not suffer significant prejudice – The Board, relying on the factors in *Wal-Mart Canada*, determined there was no real labour relations purpose to be served by continuing to litigate the complaints – The alleged surveillance took place three years ago and had no discernible impact on either party and the underlying surveillance issue had been resolved in a collective agreement which was midway through its term – In these circumstances, on the consent of the employer, the Board also dismissed the employer's complaints – Applications dismissed

TORONTO HYDRO-ELECTRIC SYSTEM LTD.; RE CUPE, LOCAL ONE AND JOHN CAMILLERI .......... 867

Interference in a Trade Union – Alteration of Jurisdiction – Apprehension of Bias – Construction Industry – Practice and Procedure – The IBEW ordered two Locals (894 & 1739) to merge with a third, much larger, Local (353) – The two Locals brought an application alleging that the IBEW did not have just cause to order the merger and accordingly had breached sections 147 & 149 – The Locals brought a motion that the Vice-Chair was biased and that a reasonable apprehension of bias existed, relying only upon previous decisions written by the Vice-Chair – The Vice-Chair refused to hear the motions as the previous decisions "speak for themselves" (and cannot be added to: see *Jacobs Catalytic*) and because the motion appeared to be a delay tactic – After an extensive review of the evidence, the Board found the IBEW had just cause under

sections 147 and 149 to make significant and substantial structural changes to the Locals to address the concerns of the IBEW as a whole and that those structural changes may well have been a merger of the three Locals – The challenges facing the Locals represented a clear danger to the future of the Locals themselves and the IBEW as a whole and the Locals could not or would not rise to the challenges before them, requiring the IBEW to act – The Board found however that the IBEW chose to act unilaterally and imposed changes without consulting the Locals involved – The Board noted that there were a number of problems with the merger and ordered the IBEW to meet with the three Locals to discuss a number of specific issues, including whether there are any alternatives to merger – Applications dismissed with directions

FIRST DISTRICT CANADA; IBEW; RE IBEW, LOCAL 1739; RE IBEW, LOCAL 353 ........ 752

Interference with Trade Union – Certification Where Act Contravened – Intimidation and Coercion – Application for certification brought without the requisite membership support – The applicant alleged that the employer engaged in conduct to intimidate the employees, interfere with the rights of the employees and interfere with the selection of the union – The union relied on three meetings held during the organizing drive – Two of these meetings were held by the president of the employer, who told the employees that he would not let anyone destroy the company, that subcontractors were available to do the work of the employees, and that if they were going to destroy the company, they should find work elsewhere – The Board found these two meetings to be a direct response to the employer discovering the union drive: these were captive audience meetings and the conduct of the company in those meetings was coercive, intimidating and threatening in a manner that would impair the ability of employees of average intelligence and fortitude to freely express their wishes to be unionized – The Board was not satisfied that the third meeting, held by a senior employee, was an action on behalf of the employer; however, the Board concluded that this meeting was an example of the impact of the earlier anti-union meetings in that employees would conclude that it was acceptable to use the company's premises, hold back employees from their work assignments, and lecture them against unionization – Ultimately, the Board found the union was unable to demonstrate that it had continued its organizing efforts after the violations of the Act occurred – There had been a five week gap between the last card signed and the captive audience meetings – Remedial certification will only be considered where the union is able to show a causal relationship between the employer's unfair labour practice activity and the union's inability to achieve support at the time the application was filed – Declaration granted – Application for certification dismissed

ALPINE CONSTRUCTION (WINDSOR) INC.; RE LIUNA, LOCAL 625 ........ 703

Interference with Trade Union – Right of Access – Strike – Unfair Labour Practice – During a long and bitter strike nine employees were terminated and banned from Vale Inco's property – One of those terminated, Veinot, had been a union activist, although after running for President of the Local (from his position as Vice-President) and losing, he had no official position at the time of the strike – After the strike was over the President retired and Veinot was appointed Local Vice President, in accordance with the Steelworkers' constitution – Vale continued to ban Veinot from all company property and refused to recognize him in those capacities where it asserted the collective agreement required him to be an employee – The Steelworkers filed this application alleging a violation of s. 70 of the Act – Veinot was a satisfactory employee, with a discipline free, or virtually discipline free record; no criminal record and no record of violent outbursts or conduct – He was found not guilty of criminal harassment resulting

from an incident that occurred during the strike, the same incident that gave rise to his termination and banning from the company property – Using either "actual interference" (see: *International Wallcoverings*) or balancing of interests (see: *Maritime Employers Association*) test, the Board found that Vale had breached the Act – First, alternative solutions were not offered by Vale; second, an arbitration proceeding was delayed as a result of the Union's advisor (Veniot) not being able to "take a view" of Vale's property; third, the ban deprived the President and others from the assistance of Veinot whenever the issue involved Vale property; and finally, the "cold and hard" message from Vale was not subtle, but undermined both Veinot and the Local – In assessing the balance of interests the Board noted that there was nothing before it that connected Veinot in any way to the incident – He was acquitted of the charges and Vale declined to explain the manner, method or content of its own investigations into the incident – The Board found it was not crebible on the evidence before it to conclude that Veinot presented such a "risk to the physical and mental well-being" of Vale Inco's employees – The Board found that between the legitimate company interests (protection of the physical and mental well-being of its employees) and reality, there must be more to "connect the dots" than a mere belief – That is, in balancing the competing interests, Vale Inco's mere belief does not outweigh the very real impact that banning Veinot from Company property has on the administration and representation of the Union – Application allowed with posting and cease and desist direction

VALE INCO LIMITED; UNITED STEELWORKERS ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 6500 AND ITS LOCAL 6200 ............................................ 884

Interim Relief – Employer – Unfair Labour Practice – In this interim reinstatement application the three named responding parties argued that a temporary employee agency was the employer and consequently the Board had no jurisdiction to issue an interim order against the responding parties – The Board found that the three responding parties were the employer for the purposes of the s. 98 application, and therefore it did not have to address the jurisdictional argument – In doing so, the Board made clear that the determination was for the purposes of the s. 98 only, not for the pending unfair labour practice or the application for certification – In reaching the conclusion that the three named entities were the employer for the interim relief application, the Board specifically rejected the argument made by the temporary employee agency that s. 74.3 of the *Employment Standards Act, 2000* rendered it the employer for the purposes of the Act – The Board reiterated a point most recently reviewed in *Alpine Construction (Windsor) Inc.* that the impact upon employees of a breach of the Act by an employer is to be determined on the basis of an assessment of objective facts rather than the subjective views of employees – Thus, the failure of the union to provide declarations from employees who said that they were chilled was not fatal to the application – Interim relief granted (one of two employees reinstated)

180 UNIVERSITY MANAGEMENT INC. AND/OR WESTBANK PROJECTS CORP. AND/OR PETERSON INVESTMENT GROUP INC., PETERSON INVESTMENT (SPRUCELAND) LTD.; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183; RE MITCHISON ARTS AND LBM CONSTRUCTION SPECIALTIES; RE HUNT MANAGEMENT GROUPE SYNERGIE INC. CARRYING ON BUSINESS AS HUNT PERSONNEL ............................................................................................................ 671

Intervenor – Final Offer Vote – First Contract Arbitration – Judicial Review – Natural Justice – One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed

RAINBOW CONCRETE; RE MARK CORNER; RE ONTARIO (MINISTER OF LABOUR), OLRB, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 .......... 934

Intimidation and Coercion – Certification Where Act Contravened – Interference with Trade Union – Application for certification brought without the requisite membership support – The applicant alleged that the employer engaged in conduct to intimidate the employees, interfere with the rights of the employees and interfere with the selection of the union – The union relied on three meetings held during the organizing drive – Two of these meetings were held by the president of the employer, who told the employees that he would not let anyone destroy the company, that subcontractors were available to do the work of the employees, and that if they were going to destroy the company, they should find work elsewhere – The Board found these two meetings to be a direct response to the employer discovering the union drive: these were captive audience meetings and the conduct of the company in those meetings was coercive, intimidating and threatening in a manner that would impair the ability of employees of average intelligence and fortitude to freely express their wishes to be unionized – The Board was not satisfied that the third meeting, held by a senior employee, was an action on behalf of the employer; however, the Board concluded that this meeting was an example of the impact of the earlier anti-union meetings in that employees would conclude that it was acceptable to use the company's premises, hold back employees from their work assignments, and lecture them against unionization – Ultimately, the Board found the union was unable to demonstrate that it had continued its organizing efforts after the violations of the Act occurred – There had been a five week gap between the last card signed and the captive audience meetings – Remedial certification will only be considered where the union is able to show a causal relationship between the employer's unfair labour practice activity and the union's inability to achieve support at the time the application was filed – Declaration granted – Application for certification dismissed

ALPINE CONSTRUCTION (WINDSOR) INC.; RE LIUNA, LOCAL 625 .......... 703

Intimidation and Coercion – Certification Where Act Contravened – Construction Industry – Remedy – The Board found that the employer was influenced by his knowledge of union activity among his crew when he failed to return them to work following a work stoppage beyond their control – When he spoke to employees individually, the employer sought to confirm that the employees had been in touch with the union, and asserted to the employees that they had quit their jobs and signed with the union – On the issue of remedy, the Board looked at allegations of employer support for the union, and options available to the Board in light of the union's inability to demonstrate an appearance of minimum employee support to warrant the holding of a vote – The Board found that the senior employee who contacted the union did so after he had severed his relationship with the employer; that is, he was acting on his own initiative against the employer's interests (and in support of the employees' interest) – The Board observed that since the union was unable to demonstrate 40% support on the date of application, no vote was ordered when the application for certification was first filed – Now, having found that the employer contravened the Act by threatening the job security of its employees and even terminating the employment of the original crew, and having determined that the union was unable to garner any additional support for its campaign, the Board decided that ordering a representation vote would be meaningless – No remedy short of remedial certification is sufficient to counter the employer's actions – Certificate ordered

VANDERWAL HOMES & COMMERCIAL GROUP; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946.................................. 906

Judicial Review – Certification – Construction Industry – Employer – The union sought judicial review of a Board decision that dismissed the union's application for certification when the union identified the incorrect employer as responding party – The Court found that the Board's finding was reasonable: the Board did not allow labour relations reality to be trumped by commercial form nor eclipsed by employer intentions; the Board's speculation on who the actual employer might be was not a finding of fact; while a finding of who the employer was might have been useful to the union, there was no obligation on the Board to make such a finding – Finally, there was no denial of natural justice – Application for judicial review dismissed

SNC-LAVALIN INC., SNC-LAVALIN GROUP INC. AND SNC-LAVALIN POWER ONTARIO INC. AND OLRB; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL ........................................................................................................ 952

Judicial Review – Final Offer Vote – First Contract Arbitration – Natural Justice – Intervenor – One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed

RAINBOW CONCRETE; RE MARK CORNER; RE ONTARIO (MINISTER OF LABOUR), OLRB, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 ........................................................................................................ 934

Judicial Review – Related Employer – SNC Lavalin sought review of the reasonableness and adequacy of the Board's decision finding the applicant was the corporate vehicle used to carry on the construction and project management work previously carried on by two companies bound by a collective agreement many years prior – The Board had decided this case did not constitute an expansion of bargaining rights – The Board had also decided this was not a case where the Union had either abandoned its bargaining rights or unduly delayed in filing the application – The court held the Board's decision was reasonable: the nature of the work (industrial and commercial construction) is by its nature episodic, and discontinuous, and dependent on the award of contracts to the employer – Regarding the adequacy of the reasons given, the Court held the conclusions were reached in a logical fashion which permitted effective judicial review; the basis for the Board's decision was intelligible and the reasons were sufficient – Application dismissed

SNC-LAVALIN INC. AND SNC-LAVALIN ENGINEERING & CONSTRUCTION INC.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 AND OLRB ........ 955

Natural Justice – Final Offer Vote – First Contract Arbitration – Judicial Review – Intervenor – One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed

RAINBOW CONCRETE; RE MARK CORNER; RE ONTARIO (MINISTER OF LABOUR), OLRB, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 ........ 934

Practice and Procedure – Alteration of Jurisdiction – Apprehension of Bias – Construction Industry – Interference in a Trade Union – The IBEW ordered two Locals (894 & 1739) to merge with a third, much larger, Local (353) – The two Locals brought an application alleging that the IBEW did not have just cause to order the merger and accordingly had breached sections 147 & 149 – The Locals brought a motion that the Vice-Chair was biased and that a reasonable apprehension of bias existed, relying only upon previous decisions written by the Vice-Chair – The Vice-Chair refused to hear the motions as the previous decisions "speak for themselves" (and cannot be added to: see *Jacobs Catalytic*) and because the motion appeared to be a delay tactic – After an extensive review of the evidence, the Board found the IBEW had just cause under sections 147 and 149 to make significant and substantial structural changes to the Locals to address the concerns of the IBEW as a whole and that those structural changes may well have been a merger of the three Locals – The challenges facing the Locals represented a clear danger to the future of the Locals themselves and the IBEW as a whole and the Locals could not or would not rise to the challenges before them, requiring the IBEW to act – The Board found however that the IBEW chose to act unilaterally and imposed changes without consulting the Locals involved – The Board noted that there were a number of problems with the merger and ordered the IBEW to meet with the three Locals to discuss a number of specific issues, including whether there are any alternatives to merger – Applications dismissed with directions

FIRST DISTRICT CANADA; IBEW; RE IBEW, LOCAL 1739; RE IBEW, LOCAL 353 .................................................... 752

Related Employer – Judicial Review – SNC Lavalin sought review of the reasonableness and adequacy of the Board's decision finding the applicant was the corporate vehicle used to carry on the construction and project management work previously carried on by two companies bound by a collective agreement many years prior – The Board had decided this case did not constitute an expansion of bargaining rights – The Board had also decided this was not a case where the Union had either abandoned its bargaining rights or unduly delayed in filing the application – The court held the Board's decision was reasonable: the nature of the work (industrial and commercial construction) is by its nature episodic, and discontinuous, and dependent on the award of contracts to the employer – Regarding the adequacy of the reasons given, the Court held the conclusions were reached in a logical fashion which permitted effective judicial review; the basis for the Board's decision was intelligible and the reasons were sufficient – Application dismissed

SNC-LAVALIN INC. AND SNC-LAVALIN ENGINEERING & CONSTRUCTION INC.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 AND OLRB .................................................... 955

Remedy – Certification Where Act Contravened – Construction Industry – Intimidation and Coercion – The Board found that the employer was influenced by his knowledge of union activity among his crew when he failed to return them to work following a work stoppage beyond their control – When he spoke to employees individually, the employer sought to confirm that the employees had been in touch with the union, and asserted to the employees that they had quit their jobs and signed with the union – On the issue of remedy, the Board looked at allegations of employer support for the union, and options available to the Board in light of the union's inability to demonstrate an appearance of minimum employee support to warrant the holding of a vote – The Board found that the senior employee who contacted the union did so after he had severed his relationship with the employer; that is, he was acting on his own initiative against the employer's interests (and in support of the employees' interest) – The Board observed that since the union was unable to demonstrate 40% support on the date of application, no vote was ordered when the application for certification was first filed – Now, having found that the employer contravened the Act by threatening the job security of its employees and even terminating the employment of the original crew, and having determined that the union was unable to garner any additional support for its campaign, the Board decided that ordering a representation vote would be meaningless – No remedy short of remedial certification is sufficient to counter the employer's actions – Certificate ordered

VANDERWAL HOMES & COMMERCIAL GROUP; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946.................................................... 906

Reprisal – Employee – Employment Standards – In cross-appeals of three decisions of an ESO, the threshold issue was whether the employees were holders of "religious office" and therefore excluded from the protections of the *Employment Standards Act* by virtue of s.

3(5)7 – The employer is a not for profit organization which exists to guide the observance of Orthodox Jewish Kosher dietary laws in Canada; the employees worked as 'Mashgiachim' kosher food inspectors – The Board held that while the 'Mashgiachim' is a religious position that does not determine whether these specific employees held a religious 'office' – There must be more to be a religious 'office holder' than mere characterization of such or that the functions or work that individual performs are significant or important to fulfill religious obligation or ritual – No evidence was tendered that the employees in question had any specific education, training, certification, or qualifications other than passing an interview and being Shomer Shabbat – Looking at other exemptions to provide context, the Board found that the essential feature of the holder of an 'office' is independence – The employees in this case did not have any greater independence than other non-religious food inspectors – The relationship in this case resembled a traditional employer/employee relationship; the exemptions are to be construed narrowly – The Board held the employees were not religious office holders and therefore not exempt – Matter continues

KASHRUTH COUNCIL OF CANADA/LE CONSEIL CACHEROUT DU CANADA; RE MORLEY RAND, MICHAEL RAND AND DIRECTOR OF EMPLOYMENT STANDARDS ........................................................................................................ 820

Right of Access – Interference with Trade Union – Strike – Unfair Labour Practice – During a long and bitter strike nine employees were terminated and banned from Vale Inco's property – One of those terminated, Veinot, had been a union activist, although after running for President of the Local (from his position as Vice-President) and losing, he had no official position at the time of the strike – After the strike was over the President retired and Veinot was appointed Local Vice President, in accordance with the Steelworkers' constitution – Vale continued to ban Veinot from all company property and refused to recognize him in those capacities where it asserted the collective agreement required him to be an employee – The Steelworkers filed this application alleging a violation of s. 70 of the Act – Veinot was a satisfactory employee, with a discipline free, or virtually discipline free record; no criminal record and no record of violent outbursts or conduct – He was found not guilty of criminal harassment resulting from an incident that occurred during the strike, the same incident that gave rise to his termination and banning from the company property – Using either "actual interference" (see: *International Wallcoverings*) or balancing of interests (see: *Maritime Employers Association*) test, the Board found that Vale had breached the Act – First, alternative solutions were not offered by Vale; second, an arbitration proceeding was delayed as a result of the Union's advisor (Veniot) not being able to "take a view" of Vale's property; third, the ban deprived the President and others from the assistance of Veinot whenever the issue involved Vale property; and finally, the "cold and hard" message from Vale was not subtle, but undermined both Veinot and the Local – In assessing the balance of interests the Board noted that there was nothing before it that connected Veinot in any way to the incident – He was acquitted of the charges and Vale declined to explain the manner, method or content of its own investigations into the incident – The Board found it was not crebible on the evidence before it to conclude that Veinot presented such a "risk to the physical and mental well-being" of Vale Inco's employees – The Board found that between the legitimate company interests (protection of the physical and mental well-being of its employees) and reality, there must be more to "connect the dots" than a mere belief – That is, in balancing the competing interests, Vale Inco's mere belief does not outweigh the very real impact that banning Veinot from Company property has on the administration and representation of the Union – Application allowed with posting and cease and desist direction

VALE INCO LIMITED; UNITED STEELWORKERS ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 6500 AND ITS LOCAL 6200 ........................................... 884

Status – Certification – Construction Industry – In this card-based application for certification, the parties had agreed some of the disputed employees had been dispatched to the work site by the employer and/or the union while others were hired locally – The employer was applying the terms of a pre-existing collective agreement and argued that all of the employees were already covered by the cross–over provisions of that agreement – Since employees can only be in one bargaining unit at a time, they should not be able to vote to determine the bargaining agent in a different bargaining unit – The Union's position was that the employees were not covered by any collective agreement when working in that particular Board area and therefore the cross–over clause did not, and could not, create bargaining rights for them – The Union further argued that the application of the terms of another collective agreement to these employees did not equate to the Union having acquired bargaining rights – The Board held the dispatched employees were bound by the cross–over provisions of the existing collective agreement and their membership evidence was to be excluded – The employer was not obligated to apply the terms of the existing collective agreement to the locally hired employees and therefore these employees were eligible to vote – Matter continues

BRENNAN PAVING & CONSTRUCTION LTD.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL .................................................................................. 720

Strike – Duty to Bargain in Good Faith – Health and Safety – Unfair Labour Practice – The Union alleged improper and unlawful surveillance of their occupational health and safety representative and filed applications under s. 50 of the OHSA and s. 96 of the LRA alleging violations of sections 70, 72 and 76 – The employer alleged the union unlawfully disrupted operations by engaging in a public smearing campaign, by turning down overtime shifts, by engaging in illegal strike activity, and by unlawfully disclosing what transpired during negotiations of the collective agreement – The employer filed applications under s. 100 and 96 of the LRA alleging violations of sections 17, 71, 76, 81 and 83 – This decision dealt with preliminary motions brought by both parties to dismiss the other parties' complaints without a hearing – The employer argued that the union's application ought to be dismissed because of: undue delay; failure to make out a prima facie case; an abuse of process; a personal attack which amounted to bargaining in bad faith; and no sound labour relations purpose for the Board to inquire into the application – The Board was not prepared to dismiss the application based on the delay argument stating once the event was crystallized the delay only amounted to seven months and the employer did not suffer significant prejudice – The Board, relying on the factors in *Wal-Mart Canada*, determined there was no real labour relations purpose to be served by continuing to litigate the complaints – The alleged surveillance took place three years ago and had no discernible impact on either party and the underlying surveillance issue had been resolved in a collective agreement which was midway through its term – In these circumstances, on the consent of the employer, the Board also dismissed the employer's complaints – Applications dismissed

TORONTO HYDRO-ELECTRIC SYSTEM LTD.; RE CUPE, LOCAL ONE AND JOHN CAMILLERI ................................................................................................. 867

Strike – Interference with Trade Union – Right of Access – Unfair Labour Practice – During a long and bitter strike nine employees were terminated and banned from Vale Inco's property – One of those terminated, Veinot, had been a union activist, although after running for President of the Local (from his position as Vice-President) and losing, he had no official position at the time of the strike – After the strike was over the President retired and Veinot was appointed Local Vice President, in accordance with the Steelworkers' constitution – Vale continued to ban Veinot from all company property and refused to recognize him in those capacities where it asserted the collective agreement required him to be an employee – The Steelworkers filed this application alleging a violation of s. 70 of the Act – Veinot was a satisfactory employee, with a discipline free, or virtually discipline free record; no criminal record and no record of violent outbursts or conduct – He was found not guilty of criminal harassment resulting from an incident that occurred during the strike, the same incident that gave rise to his termination and banning from the company property – Using either "actual interference" (see: *International Wallcoverings*) or balancing of interests (see: *Maritime Employers Association*) test, the Board found that Vale had breached the Act – First, alternative solutions were not offered by Vale; second, an arbitration proceeding was delayed as a result of the Union's advisor (Veniot) not being able to "take a view" of Vale's property; third, the ban deprived the President and others from the assistance of Veinot whenever the issue involved Vale property; and finally, the "cold and hard" message from Vale was not subtle, but undermined both Veinot and the Local – In assessing the balance of interests the Board noted that there was nothing before it that connected Veinot in any way to the incident – He was acquitted of the charges and Vale declined to explain the manner, method or content of its own investigations into the incident – The Board found it was not crebible on the evidence before it to conclude that Veinot presented such a "risk to the physical and mental well-being" of Vale Inco's employees – The Board found that between the legitimate company interests (protection of the physical and mental well-being of its employees) and reality, there must be more to "connect the dots" than a mere belief – That is, in balancing the competing interests, Vale Inco's mere belief does not outweigh the very real impact that banning Veinot from Company property has on the administration and representation of the Union – Application allowed with posting and cease and desist direction

VALE INCO LIMITED; UNITED STEELWORKERS ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 6500 AND ITS LOCAL 6200 ........................................ 884

Unfair Labour Practice – Duty to Bargain in Good Faith – Health and Safety – Strike – The Union alleged improper and unlawful surveillance of their occupational health and safety representative and filed applications under s. 50 of the OHSA and s. 96 of the LRA alleging violations of sections 70, 72 and 76 – The employer alleged the union unlawfully disrupted operations by engaging in a public smearing campaign, by turning down overtime shifts, by engaging in illegal strike activity, and by unlawfully disclosing what transpired during negotiations of the collective agreement – The employer filed applications under s. 100 and 96 of the LRA alleging violations of sections 17, 71, 76, 81 and 83 – This decision dealt with preliminary motions brought by both parties to dismiss the other parties' complaints without a hearing – The employer argued that the union's application ought to be dismissed because of: undue delay; failure to make out a prima facie case; an abuse of process; a personal attack which amounted to bargaining in bad faith; and no sound labour relations purpose for the Board to inquire into the application – The Board was not prepared to dismiss the application based on the delay argument stating once the event was crystallized the delay only amounted to seven months and the employer did not suffer significant prejudice – The Board, relying on the factors in *Wal-Mart Canada*, determined there was no real labour relations purpose to be served by continuing to litigate the complaints – The alleged surveillance took place three years ago and had no discernible impact on either party and the underlying surveillance issue had been resolved in a collective agreement which was midway through its term – In these circumstances, on the consent of the employer, the Board also dismissed the employer's complaints – Applications dismissed

TORONTO HYDRO-ELECTRIC SYSTEM LTD.; RE CUPE, LOCAL ONE AND JOHN CAMILLERI ........................................................................................ 867

Unfair Labour Practice – Employer – Interim Relief – In this interim reinstatement application the three named responding parties argued that a temporary employee agency was the employer and consequently the Board had no jurisdiction to issue an interim order against the responding parties – The Board found that the three responding parties were the employer for the purposes of the s. 98 application, and therefore it did not have to address the jurisdictional argument – In doing so, the Board made clear that the determination was for the purposes of the s. 98 only, not for the pending unfair labour practice or the application for certification – In reaching the conclusion that the three named entities were the employer for the interim relief application, the Board specifically rejected the argument made by the temporary employee agency that s. 74.3 of the *Employment Standards Act, 2000* rendered it the employer for the purposes of the Act – The Board reiterated a point most recently reviewed in *Alpine Construction (Windsor) Inc.* that the impact upon employees of a breach of the Act by an employer is to be determined on the basis of an assessment of objective facts rather than the subjective views of employees – Thus, the failure of the union to provide declarations from employees who said that they were chilled was not fatal to the application – Interim relief granted (one of two employees reinstated)

180 UNIVERSITY MANAGEMENT INC. AND/OR WESTBANK PROJECTS CORP. AND/OR PETERSON INVESTMENT GROUP INC., PETERSON INVESTMENT (SPRUCELAND) LTD.; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183; RE MITCHISON ARTS AND LBM CONSTRUCTION SPECIALTIES; RE HUNT MANAGEMENT GROUPE SYNERGIE INC. CARRYING ON BUSINESS AS HUNT PERSONNEL ........................................................................................ 671

Unfair Labour Practice – Interference with Trade Union – Right of Access – Strike – During a long and bitter strike nine employees were terminated and banned from Vale Inco's property – One of those terminated, Veinot, had been a union activist, although after running for President of the Local (from his position as Vice-President) and losing, he had no official position at the time of the strike – After the strike was over the President retired and Veinot was appointed Local Vice President, in accordance with the Steelworkers' constitution – Vale continued to ban Veinot from all company property and refused to recognize him in those capacities where it asserted the collective agreement required him to be an employee – The Steelworkers filed this application alleging a violation of s. 70 of the Act – Veinot was a satisfactory employee, with a discipline free, or virtually discipline free record; no criminal record and no record of violent outbursts or conduct – He was found not guilty of criminal harassment resulting from an incident that occurred during the strike, the same incident that gave rise to his termination and banning from the company property – Using either "actual interference" (see: *International Wallcoverings*) or balancing of interests (see: *Maritime Employers Association*) test, the Board found that Vale had breached the Act – First, alternative solutions were not offered by Vale; second, an arbitration proceeding was delayed as a result of the Union's advisor (Veniot) not being able to "take a view" of Vale's property; third, the ban deprived the President and others from the assistance of Veinot whenever the issue involved Vale property; and finally, the "cold and hard" message from Vale was not subtle, but undermined both Veinot and the Local – In assessing the balance of interests the Board noted that there was nothing before it that connected Veinot in any

way to the incident – He was acquitted of the charges and Vale declined to explain the manner, method or content of its own investigations into the incident – The Board found it was not crebible on the evidence before it to conclude that Veinot presented such a "risk to the physical and mental well-being" of Vale Inco's employees – The Board found that between the legitimate company interests (protection of the physical and mental well-being of its employees) and reality, there must be more to "connect the dots" than a mere belief – That is, in balancing the competing interests, Vale Inco's mere belief does not outweigh the very real impact that banning Veinot from Company property has on the administration and representation of the Union – Application allowed with posting and cease and desist direction

VALE INCO LIMITED; UNITED STEELWORKERS ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 6500 AND ITS LOCAL 6200 .......................................... 884

**2259-11-M** Universal Workers Union, Labourers' International Union of North America Local 183, Applicant v. **180 University Management Inc. and/or Westbank Projects Corp. and/or Peterson Investment Group Inc., Peterson Investment (Spruceland) Ltd.**, Responding Parties v. Mitchison Arts and LBM Construction Specialities, Intervenor #1 v. Hunt Management Groupe Synergie Inc. carrying on business as Hunt Personnel, Intervenor #2

**Employer – Interim Relief – Unfair Labour Practice – In this interim reinstatement application the three named responding parties argued that a temporary employee agency was the employer and consequently the Board had no jurisdiction to issue an interim order against the responding parties – The Board found that the three responding parties were the employer for the purposes of the s. 98 application, and therefore it did not have to address the jurisdictional argument – In doing so, the Board made clear that the determination was for the purposes of the s. 98 only, not for the pending unfair labour practice or the application for certification – In reaching the conclusion that the three named entities were the employer for the interim relief application, the Board specifically rejected the argument made by the temporary employee agency that s. 74.3 of the *Employment Standards Act, 2000* rendered it the employer for the purposes of the Act – The Board reiterated a point most recently reviewed in *Alpine Construction (Windsor) Inc.* that the impact upon employees of a breach of the Act by an employer is to be determined on the basis of an assessment of objective facts rather than the subjective views of employees – Thus, the failure of the union to provide declarations from employees who said that they were chilled was not fatal to the application – Interim relief granted (one of two employees reinstated)**

**BEFORE:** *Ian Anderson*, Vice-Chair.

**APPEARANCES:** *Giuseppe Agostino, Harold St. Croix, Darryl Burke, Richard Pearson, Michael Lloyd* and *Frank Vaccaro* appearing for the applicant; *Keith Burkhardt* and *Sundeep Gokhale* appearing for the responding party; *Hal P. Rolph* and *Rhona Long* appearing for intervenor # 1; and *Paul Macchione* appearing for the intervenor #2.

**DECISION OF THE BOARD:** November 24, 2011

1. This is an application for interim relief under section 98 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). It was filed on October 7, 2011, on the same date as an unfair labour practices application (Board File No. 2260-11-U). The section 98 application seeks interim reinstatement of Michael Lloyd and Richard Pearson to their employment with the responding parties in the pending unfair labour practices application.

2. The procedural history of this application is somewhat complex, and gives rise to certain issues in relation to this application.

3. This application relates to an organizing campaign the union commenced in or around September, 2011 in relation to workers employed at a construction project known as "Shangri-La Toronto" located at 180 University Ave. in Toronto, Ontario (the "Project"). The union filed a "card based" application for certification pursuant to section 128.1 of the Act on September 28, 2011 (Board File No. 2165-11-R). In that application the union sought to represent a bargaining

unit of all construction labourers in the employ of the first three named responding parties to this application, i.e. 180 University Management Inc. ("UMI") and/or Westbank Project Corp. and/or Peterson Investment Group Inc.

4. On October 3, 2011, those responding parties filed their response to the union's application for certification. Among other things, they took the position that they were not the employers of any construction labourers at work at the construction project on the day of the application.

5. As noted this application and the associated unfair labour practices application were filed by the union on October 7, 2011. As originally filed, those applications named only the first three responding parties. Those responding parties filed their response on October 12, 2011. That response asserted that all construction employees and foremen on the Project were employed by one of four independent contractors: Mitchison Arts; Hunt Personnel; DLB Construction Limited; and Redneck Contracting. The responding parties asserted that Lloyd was employed by Hunt Personnel while Pearson was employed by Mitchison Arts. That response also identified Peterson Investment (Spruceland) Ltd. as a wholly owned subsidiary of Peterson Investment Group Inc. which had the responsibility and authority to manage and supervise the back-office administration of the Project.

6. Hunt Personnel and Mitchison Arts filed interventions in this application on October 20, 2011 in which, among other things, they asserted that they were the employers of Lloyd and Pearson respectively.

7. On October 28, 2011 the union filed an application under section 1(4) of the Act in which it sought a related employer declaration against 180 University Management Inc., Westbank Project Corp., Peterson Investment Group Inc. and Peterson Investment (Spruceland) Ltd.

8. By letter dated October 31, 2011, the union sought to add Peterson Investment (Spruceland) Ltd. as a responding party to the certification application, the unfair labour practices complaint and this application for interim relief. By decision dated November 2, 2011, the Board (differently constituted) granted leave to add Spruceland as a responding party to the applications.

9. The parties have filed declarations and submissions in relation to this application for interim relief in accordance with the Board's Rules of Procedure.

10. Local 183 filed declarations from Lloyd, Pearson and from Darryl Burke, an organizer employed by the union. Those declarations indicate that the responding parties hired Pearson and Lloyd to work on the Project on or about April 16, 2011 and on or about August 15, 2011 respectively. The union alleges Lloyd and Pearson were active supporters of the union's organizing campaign. The union in essence alleges that on or about September 21 and/or 22, 2011 the responding parties came to know or suspect that Lloyd and Pearson were supporters of the union. The circumstances are set out in greater detail below. It is useful to note at this point that the union alleges that the responding parties came to have this knowledge through George Grange, whom the union describes as the site supervisor for the Project, and Steve Waller, Mark Kuryliak and Jay Keith, all of whom the union describes as assistant site supervisors. Pearson and Lloyd were both ostensibly laid off from the Project effective September 26, 2011. The

union states that there was in fact no lack of work and that the responding parties laid Lloyd and Pearson off because of their role in the union drive.

11. The responding parties filed declarations from:

- Judy Leung, Chief Operating Officer of Westbank Projects Corp.
- Beverly Wong, Vice President of Finance and Accounting for Peterson Investment Group.
- George Grange, who identifies himself as an Assistant Superintendent for the Project, and an employee of 180 University Management Inc.
- Steve Waller, who identifies himself as being employed by Hunt Personnel as a foreman at the Project.
- Jay Keith, who identifies himself as being employed by Hunt Personnel as a foreman at the Project.
- Mark Kuryliak, who identifies himself as being employed by DLB Construction Limited as a foreman at the Project.
- James Mitchison who identifies himself as the owner and directing mind of Mitchison Arts and of LBM Construction Specialties (the company whose name appears on the pay cheques received by Pearson).

12. Hunt Personnel filed a declaration from Rhona Long, Hunt Personnel's Regional Manager for the Greater Toronto Area and Southwest Ontario.

13. Mitchison Arts filed a declaration from James Mitchison.

14. The declarants of the responding parties and the intervenors agree with the union that Pearson was hired to work on the Project on or about April 16, 2011 and Lloyd was hired to work on the Project in August, 2011 (there is some disagreement as to the exact date). However, the responding parties and the intervenors state that Pearson was employed by Mitchison and Lloyd was employed by Hunt Personnel. The responding parties and the intervenors state that Pearson and Lloyd were laid off due to lack of work before they had any knowledge of a union organizing campaign.

15. A consultation was held on November 8, 2011. The Board advised the parties that it wished to ask some questions of one declarant: Steve Waller. The parties were then given an opportunity to ask questions arising from the Board's questions. The purpose of this was not to permit the Board to make determinations of credibility, but rather an attempt to clarify or expand upon certain points in Waller's declaration.

16. In their response, the responding parties raised a number of issues which they characterized as preliminary. The responding parties argue that:

- Many of the union's submissions are deficient and should be struck on the basis that they contain statements either completely unsupported by the union's declarants or are based upon statements in the declarations which themselves should be struck on the basis that they either lack particulars or are hearsay.

- The responding parties are not the employer of either Lloyd or Pearson, and accordingly the Board is without jurisdiction to grant relief under section 98(1)(b) or (c) of the Act.

- That the application should be dismissed for delay.

17. Hunt Personnel argues that there is no organizing campaign ongoing as against it, and therefore the requirements of paragraph 1 of section 98(2) cannot be met.

**Alleged Deficiencies of the Union's Submissions or Declarations**

18. As noted, the responding parties argue that many of the union's submissions are deficient and should be struck on the basis that they contain statements either completely unsupported by the union's declarants or are based upon statements in the declarations which themselves should be struck on the basis that they either lack particulars or are hearsay.

19. For the purposes of this decision, I have accepted all of the redactions suggested by the responding parties other than where specifically stated otherwise. It is, therefore, not necessary to address the responding parties' arguments with respect to redaction except in relation to those redactions. They will be addressed in context below.

**Delay**

20. Pearson's last day worked on the Project was September 21 (or, as discussed further below September 20), and he was laid off on or about September 22. Lloyd's last day worked on the Project was September 23 and he was advised that he had been laid off on September 26. This application was filed on October 7, 2011. The responding parties argue that this delay of at best eleven (11) calendar days should cause the Board to dismiss this application for delay. They cite *Value Village Stores Inc.*, 2006 CanLII 41986 (ON LRB).

21. There is no merit to this argument. In *Value Village Stores Inc.* the Board declined to dismiss an application under section 98 filed fourteen (14) calendar days after the termination of the employee whose reinstatement was sought. Eleven days is not an inordinate delay.

**Are the responding parties the employer and if not does the Board have jurisdiction to make an interim order for reinstatement in this case?**

22. In my view, it is convenient to address this issue within the context of the review of the materials before me for the purposes of determining whether an order should be made under section 98.

## Section 98

23. Section 98(2) sets out four conditions which must be met before the Board may grant interim orders under section 98(1)(b) or (c). Section 98(3) establishes a further condition which must be satisfied before the Board may grant such interim orders. I will address the condition established by section 98(3) first, followed by the four conditions set out in section 98(2).

**The Board shall not exercise its powers under clause (1)(b) [interim reinstatement] or (c) [interim orders with respect to the terms and conditions of employment of an employee who has not been terminated] if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee: s. 98(3).**

24. This condition requires the Board to determine whether it "appears" that the impugned actions of the employer were not causally related to the exercise of rights under the Act: *Patrolman Security Services Inc.*, [2005] OLRB Rep. Sept./Oct. 818, at paragraph 52. This determination is not a finding of fact, rather it is based on a "preliminary assessment of the quality or robustness of the evidence likely to be heard and tested in the pending application": *Patrolman* at paragraph 67. In making this determination, the Board will have regard to all of the material before it to determine how the explanation offered by the employer fits with the conduct alleged by the union and whether there appear to be any gaps in either the conduct complained of or the explanation: *K2 Electrical Contracting Ltd.*, [2006] OLRB Rep. May/June 375 at paragraph 44.

25. The critical issues in this case are whether it appears that the responding parties knew or believed that Pearson and Lloyd were supporters of the union and whether it appears they were laid off as a result.

26. Lloyd's declaration is to the following effect. On September 9, 2011 he spoke to a unionized cement finisher on the Project site who gave him a business card for a business representative of Labourers' Local 506. There is no suggestion that anyone observed this conversation. Lloyd called the business representative who ultimately put Burke in touch with him. Lloyd met with Burke, and two other union representatives, on September 14, 2011 at which time Lloyd declared that he signed a union card. Lloyd declared: "In the days that followed I spoke with my co-workers about the benefits of unionization." No other details are given and this appears to be a summary paragraph introducing the paragraphs that follow. In any event, Lloyd's declaration then makes reference to three specific meetings with co-workers and union representatives at which the benefits of unionization were discussed. Each of these meetings took place after work at a bar close to the work place and commenced at approximately 3:30 p.m.: on September 15, 2011, Lloyd and three co-workers met with union representatives at Fionn MacCool's; on September 21, 2011, Lloyd, Pearson and four other co-workers met with

union representatives at Fionn MacCool's; on September 22, 2011, Lloyd, Pearson and another co-worker met with union representatives at Hooters.

27. Pearson declared that he first learned from co-workers on September 13, 2011 of the union's organizing drive. He spoke with Burke by phone on September 20, 2011. He attended the September 21 and 22 meetings described by Lloyd. There is no other suggestion of union involvement by Pearson.

28. Lloyd, Pearson and Burke declared that during the September 21 meeting at MacCool's, one of the persons at their table observed Grange, "Steve" (identified in the responding parties' declarations as Steve Waller) and "Marc" (identified in the responding parties' declarations as Mark Kuryliak) at the bar. Pearson declared that this was "just before I was about to sign a union membership card". They assert that Grange, Waller and Kuryliak were "watching our meeting". They declared that they ended their meeting as a result.

29. Grange, Waller and Kuryliak all declared that Grange had invited Waller and Kuryliak to join him for dinner at MacCool's after work. Grange explained that the owner of MacCool's was going to buy them supper because of their patronage there. They had dinner and a few drinks. Grange and Waller both recognized Lloyd and Pearson. Their presence did not come as a surprise because MacCool's was a common place for employees to go after work. They noticed that Lloyd and Pearson were with a group of people but did not know if they were friends from the Project or social friends. Kuryliak did not notice Lloyd or Pearson as he did not know them.

30. There is nothing in the description of the September 21 meeting offered by Lloyd, Pearson or Burke which would identify it as a "union meeting" to an outside observer. The location of the meeting was a bar. There is no suggestion that Grange, Waller or Kuryliak could hear what was being said, only that they were "watching". There is no suggestion that the union representatives or anyone else were wearing anything which identified them as a union supporter. There is no suggestion that the union representatives present were otherwise known to Grange, Waller or Kuryliak as such. There is no suggestion that the union card which Pearson intended to sign was ever visible, or that any other union card had been visible at any time.

31. There is also nothing inherently implausible about the explanation offered by Grange, Waller and Kuryliak as to why they were present or their lack of reaction to what they had seen. The location was a bar within a block of the Project. It appears probable that workers do congregate there after work. It appears probable that the owner of the bar might be grateful to the Assistant Site Superintendent as a result. Given that workers do congregate at the bar, there is no reason why Grange or Waller would remark upon the presence of Lloyd or Pearson.

32. Lloyd declared that on September 22, around 12:00 pm., he was told by "Tom" (identified in the declaration of Waller as "Tom Legg"), a co-worker, that Waller was asking about the union and that some people were telling Waller that Lloyd had started the campaign. The union did not file a declaration from Legg.

33. The responding parties objected to the union's reliance upon this alleged statement by Legg to Waller on the basis that the union had failed to file a declaration signed by a person with "first hand knowledge" of the statement, as required by Rule 19.1(a). They argue that a hearsay

statement does not meet this requirement, citing *Almon Equipment Ltd.*, 2009 CanLII 37621 (ON LRB) at para. 5.

34. In my view, there is considerable merit to the responding parties' argument that if the union wished to rely upon Waller's alleged statements and actions as reported by Legg for their truth then the union was required to file a statement from a declarant with first hand knowledge of those statements and actions, i.e. presumably a declaration from Legg. The fact that, according to the union, Legg is now in British Columbia does not relieve the union of this obligation. The desired relief in an application such as this is extraordinary: relief on an interim basis which ordinarily could only be obtained following a determination on the merits following a full hearing. Perhaps for this reason the Act expressly provides that the onus of proof on such an application is upon the union: see s. 98(4). The nature of the proceedings is, by necessity, expeditious and the material before the Board primarily takes the form of declarations. It is appropriate, and required by the Board's Rules, that a union which decides to seek such relief must file declarations based on first hand knowledge.

35. Having said that, the fact that Legg made this statement to Lloyd is relevant to the issues before the Board and is thus properly admissible through Lloyd. Whether or not Waller made the statement attributed to him by Legg, it appears that as of September 22 the "word was out" that a union campaign was taking place and there was some speculation, at least by Legg, that Lloyd was behind it. Accordingly, I decline to entirely redact paragraph 24 from Lloyd's declaration, but will not rely upon it for the truth of Legg's assertions that Waller believed that Lloyd was behind the campaign.

36. Both Waller and Keith declared that on September 22 they heard employees describing the September 21 meeting at MacCool's as a union meeting. Waller declared that he then assumed that both Pearson and Lloyd, whom he knew and recognized at MacCool's the night before, were union supporters. Both Waller and Keith denied telling anyone about this until September 26.

37. At the consultation, Waller was asked questions about the circumstances of his alleged conversation with Legg: he was not asked about the truth of the statement indirectly attributed to him in Lloyd's declaration. Waller described his discussion with Legg as "banter at the site". He continued that "everyone knows everything that goes on, it is almost a gossip centre".

38. Lloyd, Pearson and Burke declared that they met again after work on September 22, this time at "Hooters", another bar located within a block of the Project site. Also present was another worker from the Project and three union representatives. Burke and Lloyd declared that Lloyd expressed concerns about his employment because one of the managerial staff at the Project had been asking about the union and because some of Lloyd's co-workers were accusing Lloyd of being responsible for the organizing campaign. Pearson declared that during the meeting he noticed Keith sitting approximately six feet away from their table. Pearson made eye contact with Keith. The meeting ended immediately.

39. Keith declared that he was at Hooters because they were having a small going away party for a carpentry foreman at the Project who was leaving the site. Hooters and MacCool's were the two most popular bars frequented by employees from the Project. He was not surprised to see Pearson there because Pearson had worked as a cook at Hooters. He did not know who

Pearson was with: they could have been friends from the Project, former colleagues from Hooters or social friends. He does not know Lloyd and did not recognize him.

40. As with the September 21 meeting, there is nothing in the description of the September 22 meeting offered by Lloyd, Pearson or Burke which would identify it as a "union meeting" to an outside observer. The location of the meeting was a bar. There is no suggestion that the union representatives or anyone else was wearing anything which identified them as a union supporter. There is no suggestion that the union representatives present were otherwise known to Keith as such. There is no suggestion that any union cards were visible at any time. The description of the September 22 meeting differs from the September 21 only in that Pearson declares that Keith was sitting six feet away. It is therefore possible that Keith may have overheard something. The union's declarants, however, fail to state what if anything Keith might have heard. Lloyd and Burke's declarations in relation to Lloyd's statements of concern during the meeting are not linked in time to Pearson's observation of Keith.

41. There is also nothing inherently implausible about the explanation offered by Keith as to why he was present at Hooters or as to his lack of reaction to Pearson's presence there. Hooters is a bar within a block of the Project. It appears probable that workers do congregate there after work. Keith's declaration that Pearson was formerly a cook at Hooters is uncontested, and supported by Mitchison. Given that and the fact that workers do congregate at the bar, there is no reason why Keith would remark upon the presence of Pearson at Hooters. While Keith had heard that there was a union meeting the night before at MacCool's, Keith did not know which employees had been at that meeting.

42. Grange declared that he first heard of the union's campaign mid morning of September 26. He then convened a meeting of all foremen and advised them that the union was soliciting membership cards from employees at the Project.

43. There is no dispute that in attending the union meetings on September 21 and 22, and in Lloyd's case signing a union card, Lloyd and Pearson were exercising rights under the Act. There is also no dispute that the two of them were laid off, and thereby removed from the Project. The question is whether the lay offs appear to be the result of the exercise of rights under the Act.

44. There is nothing which appears to establish direct knowledge on the part of the responding parties of the union's organizing drive prior to September 26. At the same time, it appears that there was relatively wide spread awareness on the Project of the union's organizing drive as of September 22 and some awareness that Lloyd and Pearson were involved. Thus, the responding parties could have had knowledge, notwithstanding their denials.

45. As noted by the union, it is not common for an employer to admit that it has breached the Act. Accordingly, the Board often resorts to inferential reasoning. The question in this application, therefore, is whether the circumstances surrounding the termination of the employment of Pearson and/or Lloyd appear to support the inference that the terminations took place as a result of their exercise of rights under the Act.

**Termination of Pearson's Employment**

46. Pearson declared that on September 22, one hour prior to his start for the day, he received a phone call from Mitchison telling him not to come in because his shift had been covered. Pearson received the same instructions on September 23. On Sunday September 25, Pearson declared that he received a phone call from Mitchison telling him that Grange had told Mitchison that the responding parties were cutting down on hours and that there was no work for him. Pearson declares that there was nothing at the Project to suggest a shortage of work.

47. Mitchison's declaration described sporadic employment by Pearson at the Project. This description was supported by invoices from Mitchison Arts to UMI attached to Mitchison's declaration. Mitchison also described Pearson as an unreliable employee. This description is supported by the declarations of Waller and Keith. Pearson's last period of employment at the Project was from August 21 to September 21, 2011. Mitchison declared that Pearson would have been laid off for shortage of work on or about September 2, 2011, however, a traffic control employee, Petracchi, was scheduled to be on vacation from September 6 to 20, 2011. Accordingly, Mitchison offered traffic control work to Pearson. Petracchi's absence and return appears to be confirmed by the invoices filed by Mitchison Arts. I note that while all declarants stated that Pearson's last day worked was September 21, the invoices filed by Mitchison Arts suggest that Pearson's last day worked was September 20, not September 21, and that Petracchi returned to work on September 21.

48. Mitchison also declared that in mid-September he had been instructed by Grange that Mitchison Art's invoices for late August were inordinately high and that he should make an effort to reduce the number of people employed by Mitchison Arts at the Project. Grange's declaration is to similar effect. Invoices from Mitchison Arts to UMI do peak in August and early September and thereafter begin to decline.

49. Mitchison declares that Pearson committed a safety violation in the performance of his duties as a traffic controller. Because of this, Petracchi's return and the need to reduce the number of Mitchison Arts' employees at the Project, he decided to lay Pearson off from his work as a traffic controller. Mitchison also declared that he offered Pearson work as a carpenter, but that Pearson stated he was not able to do carpentry work. Mitchison declared that he asked Pearson if he would like a Record of Employment and to be paid his vacation pay and that Pearson asked him to do that. No declaration has been filed by the union in reply to challenge these assertions.

50. If Pearson's last day of work was September 20, as suggested in the records filed, then it would appear that he was laid off before the first "union" meeting which took place at MacCool's on September 21. If Pearson's last day of work was September 21, as all of the declarants indicate, then it would appear that Pearson was laid off early in the morning of September 22, before the gossip had begun to widely circulate on the worksite that there had been a union meeting at MacCool's the night before.

51. In all of the circumstances it appears that the lay off of Pearson on September 22 (or 21) was unrelated to the exercise of rights under the Act.

**Termination of Lloyd's employment**

52. Lloyd declared:

> On Mondays I am always scheduled to begin work at 6:30 a.m. On or about Monday, September 26, 2011 I slept in and woke up at 8:00 a.m. I called Mr. Grange and I explained what happened. Mr. Grange said words to the effect of: "You are the low guy on the totem pole. I don't have any more work for you. Since I have you on the phone, don't bother coming in today. Don't waste your bus fare."

The responding parties agreed that this statement was materially correct.

53. Lloyd declared that nothing on the Project site indicated a shortage of work.

54. Grange declared that Lloyd was an employee of Hunt Personnel. Nonetheless, Grange declared that he was the one who made the decision to specifically lay off Lloyd. Grange declared that Lloyd was one of the workers who spent a substantial amount of time working on the hoists. It appears that all but one of these workers had been supplied by Hunt Personnel. One of the hoist operators, Edgar Gravelle, worked as "the hoist supervisor". Long, in her declaration filed on behalf of Hunt Personnel, confirmed that Gravelle worked as a "Senior Hoist Operator with responsibility for overseeing other Hoist Operators supplied by Hunt Personnel".

55. Grange declared that Gravelle was away on vacation commencing September 16 and scheduled to return on September 26, 2011. According to Grange, on September 23, 2011 he reviewed the schedules for the following week and determined that as a result of Gravelle's pending return, there would be too many hoist operators and one should be removed from the list as of September 26.

56. However, elsewhere in his declaration Grange declared: he meets with the foremen on the Project site on a daily basis and tells them "the work" he expects to be completed the following day or during the next few days; based on this information, each foreman is responsible for determining the number of employees that he will require the following day; if a foreman requires fewer labourers than he has reporting to work, he asks other foremen if they require a labourer for their area of the building; the foreman has complete autonomy in choosing which labourer he tells to stay home; and Grange does not control or direct which employees are instructed to report to work. Grange also declared that the hoist foreman was Gravelle.

57. It would appear to follow from this that there must always be a foreman, provided by one of the independent contractors, on site to supervise the workers in a given area. Yet there is no suggestion that when Gravelle was absent on vacation, from the week of September 16 through to September 26, another foreman was supplied by Hunt Personnel to supervise the hoist operators. In the absence of one of its foremen at the Project site, one would have thought that the determination of which of its hoist operators to lay off would have been made by Hunt Personnel. Yet Grange declares that he made this determination. Having stepped into the shoes of one of the foremen, and having purportedly determined that Lloyd was not required as a hoist operator, it is also odd that Grange did not do what he declared other foremen do in similar circumstances: ask other foremen if they required a labourer in their area of the building.

58. Further, the schedules which Grange purportedly reviewed for the week of September 26 are not attached to Grange's declaration, and were not otherwise filed as part of the response filed by the responding parties, or the intervenors. Given that the union specifically asserted that there was no lack of work which could give rise to the lay off, this omission is curious.

59. What are attached to Grange's declaration are copies of the invoices from Hunt Personnel relating to hoist operator work. Those invoices show an *increase* in the number of hours worked by hoist operators from mid-August to the week ending October 1. In the week ending August 20, 198.25 hours were worked; in the week ending August 27, 235.5 hours were worked; in the week ending September 3, 219.75 hours were worked; in the week ending September 10, 215 hours were worked; in the week ending September 17, 220.5 hours were worked; in the week ending September 24, 216.5 hours were worked; in the week ending October 1, 225.75 hours were worked. That is, in the week following the termination of Lloyd's employment at the Project, the number of hours worked by hoist operators actually increased. These results are essentially the same if the hours of Mitch Turner, a hoist operator supplied by Mitchison Arts, are included.

60. It is true that the number of hoist operators declines to 6 in the week following Lloyd's termination. But this is accomplished in part by increasing the hours worked by those employees and eliminating a number of the employees who performed the work only occasionally. Further, I note that Grange declared that the number of hoist operators "could" have been reduced from 8 to 6 in early September. In fact, this reduction did not take place until the end of September.

61. Having purportedly determined that there were going to be too many hoist operators and Lloyd was one to be laid off, Grange also declared that on September 23 he contacted Hunt Personnel and informed them that "I would no longer require the services of Lloyd, being the most junior hoist operator on his shift." Notably, Grange does not say who he contacted at Hunt Personnel. Grange states that he expected Hunt Personnel to contact Lloyd and was surprised when Lloyd contacted him on September 26.

62. The only particulars specific to Lloyd provided by Hunt Personnel's declarant, Long, are that Lloyd was assigned to the responding party 180 University Management Inc. at the Project "from on or about August 28, 2011 until September 23, 2011 when he was no longer required by UMI". This is followed by a paragraph stating that assignment employees are commonly told that their assignments will end with short or no notice and that assignment employees know or should know that assignments are temporary and often sporadic. None of this is specific to Lloyd. Hunt Personnel does not corroborate Grange's declaration that Grange contacted Hunt Personnel on September 23 to inform Hunt Personnel that Lloyd's services were no longer required; or that the reasons offered by Grange was that there was a reduction in the amount of work and that Lloyd was the most junior person on his shift. Nor does Hunt Personnel confirm that it was not asked to replace Lloyd, as one would expect if there was indeed a reduction in the amount of work at the Project.

63. In short, there are a number of gaps in the explanation offered by the responding parties, and Hunt Personnel, as to the reasons why Lloyd's employment was terminated at the Project. On the one hand, the timing of the decision is immediately after the union meetings attended by Pearson, which were the subject of widespread gossip at the Project. On the other hand, the timing is unrelated to the purported reason for the decision, a slow down in work which

occurred weeks earlier, and not driven by any reduction in the number of hours being worked by hoist operators. The process followed in relation to the decision differed from the norm in that it was made by Grange, not a foreman supplied by Hunt Personnel, and Grange did not seek to determine if there was other work for Lloyd on the Project. There is no confirmation of Grange's claim that he contacted Hunt Personnel on September 23 by Hunt Personnel.

64. There is no question that Grange acted at all times as the agent for one or more of the responding parties. In all of the circumstances, I cannot say that the responding parties' actions appear unrelated to the exercise of rights by Lloyd.

**Who is Lloyd's employer?**

65. The responding parties argue that an order under section 98 directing the interim reinstatement of an employee may only be made against that employee's employer. They are not, they assert, Lloyd's employer. In the result, they argue, no interim reinstatement order may be made against them. The responding parties are joined in this argument by Hunt Personnel, which also argues that no interim reinstatement order can be made against it because, among other things, the union has no campaign to establish bargaining rights underway as against it.

66. Hunt Personnel argues that it is the employer of Lloyd, both as a result of the application of the York Condominium test and as a result of section 74.3 of the *Employment Standards Act, 2000*, which provides as follows:

> Where a temporary help agency and a person agree, whether or not in writing, that the agency will assign or attempt to assign the person to perform work on a temporary basis for clients or potential clients of the agency,
>
> (a) the temporary help agency is the person's employer;
>
> (b) the person is an employee of the temporary help agency.

67. Hunt Personnel argues that since the Board is responsible for the interpretation and application of both the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*, the Board should apply section 74.3 of the *Employment Standards Act, 2000* to the issue of who is the employer for the purposes of the *Labour Relations Act, 1995*. I am not persuaded by this argument. The Board has a role in interpreting and applying a number of statutes. The *Labour Relations Act, 1995* contains no definition of the term employer. However, the definition of employer contained in other statutes under which the Board has jurisdiction is not the same. For example, the definition of employer contained in the *Employment Standards Act, 2000* differs from the definition contained in the *Occupational Health and Safety Act* which differs again from the various definitions in the *Public Service Labour Relations Transition Act, 1997*. In my view, the meaning of the term employer under the *Labour Relations Act, 1995* requires consideration of the purposes of the *Labour Relations Act, 1995*, not the definition of employer contained in one or more other statutes.

68. In *National Waste Services Inc.* 2009 CanLII 29865 (ON LRB) the Board (differently constituted) considered whether section 74.3 of the *Employment Standards Act, 2000* would alter the Board's determination of who was the employer for the purposes of *Labour Relations Act,*

*1995*. The Board held that it did not. It noted that the amendments of the *Employment Standards Act, 2000* had the effect of deeming temporary help agencies to be the employer for the purposes of certain employment standards minimums: they do not alter the Board's assessment of who has fundamental control for the purposes of an application for certification. It also noted that had the Legislature wanted to ensure that collective bargaining is done by the same entity which will have the employment standards obligations for temporary help workers it could have amended the *Labour Relations Act, 1995* at the same time. Hunt Personnel argues that the comments by the Board in National Waste Services Inc. were obiter. I agree that they were. They are, however, persuasive and I adopt them here.

69. In *National Waste Services* the Board cited the decision of the Supreme Court of Canada in *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015. In that case, the Court was considering the question of whether a temporary personnel agency or its client was the employer of an employee for the purposes of the collective bargaining provisions of the Quebec *Labour Code*. The Court endorsed a "greatest" or "fundamental" control test, as manifested through the factors typically considered by this Board. The Court noted that the provisions of the Ontario Labour Relations Act were similar to the Quebec legislation and went on to observe that in applying the fundamental control test, the Ontario Labour Relations Board has "generally concluded that the client is the temporary employee's real employer".

70. All parties agree that the factors considered by the Board for the purposes of determining which of two entities is an individual's employee are those set out in *York Condominium Corporation No. 46*, [1977] OLRB Rep. Oct. 645 at page 648. I turn to consider the application of those factors to the material before me on this application for interim relief.

**The party exercising direction and control over the employees performing the work.**

71. Grange's declaration indicated that on a daily basis he determines the work to be performed the next day or during the next few days and advises the foremen. I conclude that the responding parties exercise direction and control over the employees performing the work.

**The party bearing the burden of remuneration.**

72. Pursuant to the provisions of the *Employment Standards Act, 2000* referenced above, Hunt Personnel bore the legal burden of remuneration of Lloyd. However, Hunt Personnel invoiced the responding parties on the basis of time worked by Lloyd: the ultimate burden of remuneration lay with the responding parties.

**The party imposing discipline.**

73. There is insufficient evidence with respect to either the responding parties or Hunt Personnel imposing discipline on Lloyd.

**The party hiring the employees.**

74. Lloyd was referred to the Project by Hunt Personnel. Grange did not contest Lloyd's declaration that Grange reviewed his resume and interviewed him when he first arrived at the Project. Further, there is no dispute that Grange then: coordinated Lloyd's training as a hoist operator; informed Lloyd that he had successfully completed his training; and contacted Lloyd

directly to request him to attend work at the Project. I conclude that Grange hired Lloyd to work at the Project.

**The party with the authority to dismiss the employees.**

75. The evidence before me, discussed in detail above, establishes that the responding parties, through Grange, exercised the authority to dismiss Lloyd.

**The party which is perceived to be the employer by the employees.**

76. Lloyd perceived the responding parties to be his employer.

**The existence of an intention to create the relationship of employer and employees.**

77. The expressed intention was to create an employment relationship between Hunt Personnel and Lloyd; there was no intention to create an employment relationship between the responding parties and Lloyd.

**Conclusion as to who is Lloyd's employer.**

78. Having regard to all of the above factors, I conclude on the basis of the material before me that fundamental control over Lloyd's employment was exercised by the responding parties and that therefore, for the purposes of this application for interim relief, one or more of them was Lloyd's employer. To be clear, I do not determine, nor am I called upon to determine, whether the responding parties are Lloyd's employer for the purposes of the pending unfair labour practices complaint or the pending application for certification.

79. In light of this conclusion it is not necessary for me to address the issue of whether or not an order under section 98 directing the interim reinstatement of an employee may be made against a party that is not the employee's employer.

80. In the result I am not satisfied that the termination of Lloyd's employment by the responding parties appears unrelated to the exercise of rights under the Act. Accordingly, the precondition established by section 98(3) with respect to an interim order has been satisfied.

**The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway: s. 98(2) 1.**

81. This condition requires the Board to "determine as a question of fact, whether the circumstances giving rise to the unfair labour practice complaint in the main pending application arose during a campaign to establish bargaining rights": *Patrolman* at paragraph 49.

82. The responding parties concede that this condition is met.

83. The pending unfair labour practice complaint alleges, *inter alia*, the termination of Lloyd arises from his involvement in the union's organizing campaign, and took place during that campaign. I have no hesitation in finding that the circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.

**There is a serious issue to be decided in the pending proceeding: s. 98(2)2.**

84. This condition requires the Board to "review the pleadings of both parties to determine whether there is a serious issue between them to adjudicate in the main application": *Patrolman* at paragraph 50.

85. The responding parties concede that this condition is met.

86. The unfair labour practice complaint alleges that Lloyd's employment was terminated because he was an inside organizer. The Board has consistently found that this is a serious issue and I so find in this case.

**The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives: s. 98(2)3.; and**

**The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding: s. 98(2)4.**

87. These two conditions:

> ... both require the Board to draw conclusions as to the likely prospective consequences to the parties where the relief sought is or is not granted. Both sections require the Board to attempt to anticipate the degree of harm or the labour relations consequences which will occur, as a result of the granting or withholding of relief. Both require the Board to examine the current circumstances of the parties and to then extrapolate to predict likely future outcomes.
>
> (*Patrolman* at paragraph 51.)

88. In *K2 Electrical*, at paragraph 30, the Board described the manner in which these determinations were to be made as follows:

> In my view, for the purposes of the interim application, the determination of each party's circumstances is to be made primarily on the declarations filed by that party, as supplemented through information obtained by the Board at the consultation, and through the application of the Board's experience, in particular with respect to the prediction as to likely future outcomes. This appears to me to be the nature of the exercise which the Board undertook in *Patrolman*.

89. Lloyd declared that as a result of the termination of his employment he has experienced personal and financial stresses and hardships. I agree with the responding parties that this is not the kind of harm with which section 98 is concerned. Financial losses in particular can be remedied after the fact. More generally, the focus of section 98 is harm to the union's organizing campaign, not harm to the individual employee who was terminated or whose terms and conditions of employment have been altered: see, for example, *Sarnia Paving Stone Ltd.*, 2005 Can LII 35997 (ON LRB), at paragraph 37.

90. Lloyd declared as to his "belief" that the responding parties intended to send a chilling message to other employees and his further "belief" that the responding parties' actions have the possibility of causing the union's organizing campaign to be unsuccessful. No further particulars are provided as to the basis for these beliefs. I agree with the responding parties that these parts of Lloyd's declaration are of little or no value. As discussed further below, it is not the beliefs of employees but the objective basis for such beliefs that is material to the determinations to be made by the Board.

91. Burke declared that he was expecting "more employees" to be in attendance at the September 22 union meeting. Burke also declared that after he learned of the termination of Pearson and Lloyd, he attempted to contact other "individuals" or "employees" working for the responding parties who had been union supporters to ask if they would continue to help. It appears that only one of these individuals responded: that individual sent an email to Burke on September 26 in which he or she stated that "unfortunately I don't feel too comfortable trying to recruit more guys cause I gotta eat man, shitty pay is better than no pay".

92. The responding parties object to these parts of Burke's declaration on the basis that they are based on hearsay or lacking in particulars. I disagree. Burke's expectation as to the number of employees who were going to attend the September 22 meeting, and the failure of that expectation to be realized, is entitled to some weight in this application for the purposes of determining the impact on the union's organizing campaign. Further, for the purposes of this application, the union is not required to particularize the names of its other supporters.

93. The responding parties note that the union's declarations only refer to the signing of one union card: the one signed by Lloyd on September 14. They also note that in its application for certification filed on September 28, the union asserted that there were seventeen (17) employees in the bargaining unit and that it had support from at least 55% of those employees. From this the responding parties ask the Board to infer that at least nine (9) individuals signed cards after the termination of Lloyd's employment on September 26. Therefore, the responding parties argue, the termination of Lloyd's employment cannot be said to have harmed the union's organizing campaign. They point to *Upper Gage Price Chopper*, 2009, CanLII 39216 (ON LRB) and *Novotel Canada Inc.* 2010 CanLII 21183 where the Board (differently constituted) dismissed applications for interim reinstatement on the basis that the applicants' declarations demonstrated that the applicant union had more success in its organizing campaign after the discharge of the inside supporter than before.

94. With due respect, this is a straw dog argument based on unsupported inference and supposition. The union's declarations are simply silent on the number of cards signed before and after the termination of Lloyd (and Pearson). No inference can be drawn that all cards, other than Lloyd's, were signed after his termination. The better inference, based on Burke's declaration as to his lack of success in soliciting continuing support from individuals who had previously supported the union is that no further cards were signed. (And, while I place no reliance upon it, the fact of the matter is that a review of the cards filed by the union in support of its application for certification reveals that none of them post date the termination of Lloyd or Pearson.)

95. The responding parties argue that because the union was able to file its application for certification following the termination of Lloyd (and Pearson) under section 128.1 of the Act, it cannot be said that there was harm to the union's organizing campaign.

96. This argument is not persuasive. In their response to the application for certification the responding parties took the position that in the event that they were the employer, there were forty-seven (47) employees in the bargaining unit applied for, not seventeen (17) as estimated by the union. This means that the union's application for certification will be dismissed unless the Board determines that a number of the individuals identified by the responding parties as having the status of employees in the bargaining unit do not in fact have that status. Further, if the union wins enough of the status disputes to establish support of 40% of the employees in the bargaining unit, but not 55%, then a vote will be directed. In order to advance its position, the union will need information and cooperation of individuals who were employees in the bargaining unit as of the date of the application, some of whom may continue to be employees. As the Board has repeatedly observed, this is unlikely to happen if the union is perceived as ineffective in protecting its supporters: see for example, *Cornwall Gravel Co. Ltd.*, 2006 CanLII 22588, at para. 16.

97. Within the context of addressing the balance of harm, the responding parties make a further argument about whether the union's materials are sufficient to establish irreparable harm to the union. The responding parties argue that the union's statement that individuals performing the work of labourers at the Project would have a diminished view of the union should Lloyd not be reinstated is a bald assertion unsupported by facts or particulars.

98. This argument appears to rest on the premise that the union was required to file declarations from individuals in the bargaining unit in which those individuals express the view that they no longer support the union by reason of Lloyd's termination. Such declarations are not required; indeed, they may not even be relevant. Apart from the difficulty of reconciling such evidence with section 119(1) of the Act, which precludes the compelled disclosure of whether or not a person is a member or supporter of a trade union without the consent of the Board, it is inherently unreliable. For this reason, the Board has commented that the impact upon employees of a breach of the Act by an employer is to be determined on the basis of an assessment of objective facts rather than the subjective views of employees: see for example the discussion in *Alpine Construction (Windsor) Inc.*, 2011 CanLII 69421 (ON LRB) at para. 54-56.

99. I conclude, therefore, that the union has established that it will experience irreparable harm if Lloyd is not reinstated.

100. This brings me to the issue of the balance of harm. The harm to the union is described above. The responding parties assert that the reinstatement of Lloyd would cause them significant harm, and that the balance of harm weighs against reinstatement.

101. The responding parties argue that the termination of Lloyd took the form of a lay off for lack of work. They assert that there has not been any increase in the labour requirements of the Project, and indeed there have been further reductions in staffing. They argue that there is certain work on at the Project which Lloyd cannot perform. Further, they argue that the reinstatement of Lloyd would necessitate the lay off of another worker. They assert that they have a "business interest" in having the most senior employees at the Project.

102. These arguments are not persuasive. The only statement in the declarations as to the number of labourers required at the Project is a statement by Grange that he "expected the number of labourers on the [Project] would drop from sixty (60) in early September to approximately forty-five (45) by early October." For the reasons stated, it does not appear to me

that this drop was the cause, or at least the sole cause, of Lloyd's lay off. It is also odd that the responding parties, who claimed that the selection of which employees to lay off was a determination made solely by the various labour supply companies, would now assert a "business interest" in having the most senior employees on the Project. In any event, when the Board orders reinstatement it is generally on the same terms and conditions of employment which applied as of the date of termination. There can be no question in the construction industry those terms and conditions include the possibility of lay off. Thus, the mere fact that the reinstatement of Lloyd could necessitate the lay off of another worker does not counterbalance the harm to the union if reinstatement is not ordered.

103. There is no statement in the declarations with respect to whether further reductions in staffing were expected. If there were, it is not obvious that Lloyd would have been the individual laid off. In addition to having been trained to operate the hoist, Lloyd's declaration indicated that he has experience in operating a scissor lift and a forklift, he had framed houses for two years and worked with fire spray for three years. Given the responding parties' prior assertion that if a worker is not required by a foreman in one area, the foremen in other areas would be asked if they had need of the individual, it appears at least possible that a position can be found for Lloyd. An order directing reinstatement would require the responding parties to turn their mind to this possibility and attempt to reach agreement with the union. In the event the parties cannot reach agreement, recourse may be had to the Board.

104. I am aware that, prior to the termination of his employment at the Project, Hunt Personnel acted as paymaster for Lloyd. I note in this respect that there is nothing in the materials before me to suggest that Hunt Personnel has terminated its relationship with Lloyd. If Hunt Personnel has terminated its relationship with Lloyd it may well be that it would be prepared to reinstate it upon the request of the responding parties. In any event, the responding parties are responsible for ensuring the proper remuneration of Lloyd.

105. For all of the foregoing reasons, I find that the balance of harm favours the granting of the interim reinstatement order.

## Disposition

106. The Board orders 180 University Management Inc. and/or Westbank Project Corp. and/or Peterson Investment Group Inc. and/or Peterson Investment (Spruceland) Ltd. (collectively the "responding parties") to:

a) reinstate Michael Lloyd immediately to his employment on the same terms and conditions he enjoyed prior to September 23, 2011;

b) refrain from suspending, discontinuing or otherwise terminating, Michael Lloyd's employment or changing the terms and conditions of his employment until the Board issues final decisions in the unfair labour practice complaint (Board File No. 2260-11-U) except with the consent of the union, or of the Board on application by the responding parties;

c) post a copy of this decision in conspicuous locations where its employees are likely to see it;

d) keep these copies of this decision posted for not less than 30 days; and

e) post a copy of the attached Notice to Employees in conspicuous locations where its employees are likely to see it and keep it posted for 30 days.

107. I remain seized to deal with any issues arising out of the implementation of this decision.

## Appendix "A"

# The Labour Relations Act, 1995

## NOTICE TO EMPLOYEES

## Posted by order of the Ontario Labour Relations Board

We have posted this notice in compliance with a direction of the Board, issued after a hearing in which both the company and the union had the opportunity to make submissions.

The Board has ordered 180 University Management Inc. and/or Westbank Project Corp. and/or Peterson Investment Group Inc. and/or Peterson Investment (Spruceland) Ltd. (collectively the "responding parties") to reinstate Michael Lloyd ON AN INTERIM BASIS until the Board considers the reason for his discharge. A hearing before the Board will commence soon. The purpose of that hearing is to determine why Michael Lloyd was discharged.

If the Board ultimately determines that Michael Lloyd was discharged for improper conduct, and his support for the Union had nothing to do with it, the temporary reinstatement order will be revoked, and the responding parties will no longer be required to employ him.

If the Board ultimately finds that his discharge occurred because he was a union supporter, exercising his rights under the *Labour Relations Act,* the Board may confirm his reinstatement, and direct that he be compensated for all earnings and benefits lost as a result of his discharge.

Employees in Ontario have these rights which are protected by law:

> An employee has the right to join a trade union of his or her own choice and to participate in its lawful activities.
>
> An employee has the right to oppose a trade union, or subject to the union security clause in the collective agreement with his or her employer, refuse to join a trade union.
>
> An employee has the right to cast a secret ballot in favour of, or in opposition to, a trade union if the Ontario Labour Relations Board directs a representation vote.
>
> An employee has the right not to be discriminated against or penalized by an employer or by a trade union because he or she is exercising rights under the *Labour Relations Act, 1995*, as amended.
>
> An employee has the right not to be penalized because he or she participated in a proceeding under the *Labour Relations Act, 1995*, as amended.

> An employee has the right to remain neutral, to refuse to sign documents opposing the union or to refuse to sign a union membership card.

It is unlawful for employees to be fired or in any way penalized for the exercise of these rights. If this happens, a complaint may be filled with the Ontario Labour Relations Board.

It is unlawful for anyone to use intimidation to compel someone else to become or refrain from becoming a member of a trade union, or to compel someone to refrain from exercising rights under the *Labour Relations Act, 1995*, as amended.

**This is an official notice of the Board and must not be removed or defaced.**

**This notice must remain posted for 30 consecutive days.**

**DATED this 24th day of November, 2011.**

**1071-11-M; 1171-11-U** International Brotherhood of Electrical Workers, Local 353, Applicant v. **Ainsworth Inc.**, Responding Party v. Gareth Fellows, Employee; Gareth Fellows, Applicant v. International Brotherhood of Electrical Workers, Local 353, Responding Party v. Ainsworth Inc., Intervenor

**Bargaining Unit – Delay – Duty of Fair Representation – Employee – Fellows had been working in the position of 'Project Manager' although he continued to 'work on the tools' – Ainsworth paid remittances on behalf of Fellows who paid dues as a member of the Union – Fellows was reassigned as a 'working foreman' and, as a result, he chose to end his employment with Ainsworth claiming he had been constructively dismissed – This consolidated application followed a ruling of the Superior Court which stayed the constructive dismissal action pending a determination of whether Fellows was covered by the collective agreement, an issue the court deemed was beyond its jurisdiction – In this application the Union sought a determination under s.114(2) of the Act to determine whether Fellows was an 'employee' within the meaning of the Act and Fellows sought a declaration that the Union had violated s.74 – Ainsworth sought to have both matters dismissed due to delay as both parties previously knew or ought to have known there was an issue regarding Fellows' bargaining unit status which ought to have been grieved – Ainsworth also argued the Board lacked jurisdiction to determine whether Fellows was in the bargaining unit because that determination must be made by an arbitrator, not the Board – Respecting the delay issue the Board was of the view both parties acted promptly once the issue concerning status was crystallized by the ruling of the Superior Court – On the jurisdictional issue the Board noted a Union could only violate its duty of fair representation under s.74 to a member in the bargaining unit, that is, a complainant must be in the bargaining for the duty to be owed – The Board held it had the power and the obligation under s.114(1) to determine whether Fellows is an 'employee' under the Act and under s. 74 to determine whether Fellows was a member of the bargaining unit – Parties ordered to file statements of fact – Matter continues by way of consultation**

**BEFORE:** *Harry Freedman*, Vice-Chair.

***APPEARANCES:*** *Elizabeth Mitchell* and *Stephen Martin* for International Brotherhood of Electrical Workers, Local 353; *Ellen M. Snow* and *Gareth Fellows* for Gareth Fellows; *Rob Bayne* and *Alysia Carter* for Ainsworth Inc.

**DECISION OF THE BOARD:** December 2, 2011

1. These two applications were filed with the Board on June 23, 2011 (Board File No. 1071-11-M) and July 5, 2011 (Board File No. 1171-11-U) after the April 5, 2011 Superior Court of Justice decision in *Fellows* v. *Ainsworth Inc.* (unreported, Court File No. CV-09-392866). That decision was issued in a motion made by Ainsworth Inc. ("Ainsworth") for an order either dismissing or staying the civil action commenced by Gareth Fellows in which Mr. Fellows claimed he had been constructively dismissed from his position as a project manager with Ainsworth. Ainsworth asserted Mr. Fellows was a bargaining unit employee covered by a collective agreement at the time of the alleged constructive dismissal. Mr. Fellows asserted he was not a bargaining unit employee and was not covered by the collective agreement at the time he was constructively dismissed. Madam Justice Pollak, in accordance with the decision of the Ontario Court of Appeal in *Claxton* v. *BML Multi Trades Group Ltd.*, (2003), 27 C.C.E.L (3d)

161; [2004] CLLC ¶ 220-030, stayed that action because the resolution of the issue between Ainsworth and Mr. Fellows required an interpretation of a collective agreement.

2. The application made by the International Brotherhood of Electrical Workers, Local 353 (the "IBEW") in Board File No. 1071-11-M seeks a determination under section 114(2) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1 as am. (the "Act") as to whether Mr. Fellows was an "employee" within the meaning of the Act and whether he was an employee in the bargaining unit described in the collective agreement between the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario "(the Principal Agreement") by which Ainsworth was bound.

3. The application made by Mr. Fellows in Board File No. 1171-11-U alleges the failure of the IBEW to file a grievance seeking a determination as to whether his employment with Ainsworth at the times material to his civil action was subject to the provisions of the Principal Agreement was contrary to section 74 of the Act. Mr. Fellows seeks an order directing the IBEW to grieve the issue of whether he was within the bargaining unit in the Principal Agreement while he was employed by Ainsworth or in the alternative, damages for its violation of section 74 of the Act. I understand that Mr. Fellows wants the IBEW to obtain a declaration he was not an employee in the bargaining unit when he held the position of project manager with Ainsworth.

4. At the request of the IBEW, by decision dated July 19, 2011, these two applications were consolidated and referred to the Registrar to set a hearing date after the Board, differently constituted, had reviewed the parties' submissions in respect of the IBEW's request.

5. The Chair of the Board authorized me to sit alone to hear and determine this consolidated matter pursuant to section 110(14)(a) of the Act.

6. When the hearing of this matter convened, Ainsworth pursued the preliminary objections it had made in its responses by which it sought the dismissal of both applications on the basis of delay, as well as asserting the IBEW application in Board File No. 1071-11-M was misconceived since it was an attempt, according to Ainsworth, to avoid the timeliness and arbitrability issues that would arise if it had sought to file a grievance to determine whether Mr. Fellows was an employee in the bargaining unit. In any event, Ainsworth pointed out the IBEW application was not really concerned with whether Mr. Fellows was an employee within the meaning of the Act but rather was seeking a ruling as to whether he was an employee in the bargaining unit and covered by the Principal Agreement. It contended what the IBEW was really asking the Board to determine was the issue that should have been decided by an arbitrator had the IBEW acted promptly once it became aware that the status of Mr. Fellows was in dispute which was in October 2008, and at the latest, early July 2009. Ainsworth also submitted the Board should dismiss both applications on the basis of an estoppel like principle but in doing so conceded that ground would require evidence to establish a factual foundation for its argument. Ainsworth was content to reserve its right to raise its estoppel argument, if necessary, as a defence should the Board proceed to hear the merits of these two applications.

7. The parties also disagreed with how the Board should frame the issues to be determined if it became necessary to deal with the merits of the consolidated matter in the event the Board dismissed the preliminary objections raised by Ainsworth. Very briefly, both Mr. Fellows and the IBEW submitted the Board should first determine whether the IBEW owed a

duty of fair representation under section 74 of the Act to Mr. Fellows, and if so, whether it met its obligation to represent him in a manner that was not arbitrary. There was no suggestion in any of the material filed in these matters that the IBEW had acted in a fashion that was discriminatory or in bad faith. Ainsworth submitted the Board should look at the facts and circumstances as they existed when the issue of the status of Mr. Fellows as a bargaining unit employee came to the attention of the IBEW on two different occasions and assess whether the IBEW's action was reasonable. (If its decisions were reasonable then they would not be arbitrary.) If the Board was satisfied on the facts as they existed at the time when the IBEW made its decisions not to pursue any claim on behalf of Mr. Fellows that its decisions were not arbitrary, then there would be no need to determine the issue of whether Mr. Fellows was an employee in the bargaining unit as that is the issue that must, according to Ainsworth, be decided by an arbitrator interpreting the Principal Agreement and not by the Board.

8. There were a number of material facts not in dispute that provide some context for the parties' arguments.

9. Mr. Fellows has been a member of the IBEW since he began his employment with Ainsworth as an apprentice electrician in September 1983. At some point during his employment he was appointed to the position of project manager. Throughout his employment both before and during the time he was a project manager, at least up to October 3, 2008, Mr. Fellows performed work "on the tools" that came within the scope of the Principal Agreement. At the end of June, 2009 Ainsworth assigned Mr. Fellows to the position of working foreman, a position that is in the bargaining unit and covered by the Principal Agreement. Mr. Fellows carried out the duties of a working foreman for less than two weeks, and after contacting the IBEW, determined he had been constructively dismissed from his project manager job. He chose to end his employment with Ainsworth at that time. He subsequently launched a civil action in the Superior Court against Ainsworth claiming constructive dismissal.

10. Mr. Fellows remained a member of the IBEW throughout his employment with Ainsworth. Ainsworth made remittances to the IBEW under the Principal Agreement in respect of every hour earned and worked by Mr. Fellows from the time he started with Ainsworth up to the day his employment ended in July, 2009. Those remittances to the IBEW and to the trust funds under the Principal Agreement included union dues, pension contributions, vacation & statutory holiday pay, health & welfare premiums and employer bargaining agency industry fund contributions.

11. By letter dated October 3, 2008 Ainsworth advised Mr. Fellows that members of its senior management team have "determined the job functions you are currently performing is classified as Project Manager." That same letter made it clear he would no longer be expected to work more than forty hours a week and four overtime hours and that he would not be compensated for more than those four hours of overtime a week unless any such additional overtime hours were authorized prior to him doing any additional overtime work.

12. In addition, Ainsworth in that October 3rd letter stated:

> Traditionally, Project Managers have participated in a variable compensation plan based on achieving profitable business volumes and various other tangible objectives. For the remainder of this fiscal year, you will be eligible

> to participate in a similar plan which can result in payment of a discretionary bonus.

There was nothing in the Principal Agreement that obliged Ainsworth to enroll Mr. Fellows in a variable compensation plan similar to the variable compensation plan in which other project managers participated. That additional compensation arrangement was outside the Principal Agreement and the IBEW was not a party to it.

13. Mr. Fellows in an e-mail to Ainsworth dated October 12, 2008 raised concerns about the changes implemented by Ainsworth as set out in that October 3rd letter. Mr. Fellows had contacted the IBEW about the changes and in particular the elimination of all but four hours of overtime. He was informed by the IBEW that because he was a project manager he could not file a grievance over those changes. He had also discussed the matter with counsel. Although Mr. Fellows did not agree to the changes that were made, he continued to work as a project manager with Ainsworth implementing those changes, including the reduction of overtime compensation and having him participate in a variable compensation plan similar to the plan provided to other project managers.

14. When Mr. Fellows contacted the IBEW in October, 2008 and again in July, 2009 after he had been assigned to the working foremen position, the IBEW was told by Mr. Fellows that he had been employed as a project manager. Based on that information, and its understanding of his role at Ainsworth, the IBEW formed the view that it could not grieve the decision made in October, 2008 to reduce his overtime entitlement nor could it grieve the decision made by Ainsworth in June, 2009 to move Mr. Fellows from his position of project manager to the position of working foreman. The IBEW did not contact Ainsworth about the status of Mr. Fellows or about the concerns he had raised.

15. As a working foreman, Mr. Fellows was an employee in the bargaining unit. The IBEW believed that Mr. Fellows, when he was employed as a project manager prior to being assigned to the working foreman position, was not in the bargaining unit and therefore the IBEW understood it could not take any action under the Principal Agreement to challenge those decisions. Neither Mr. Fellows nor the IBEW advised Ainsworth at any time between October 2008 and July 2009 when Mr. Fellows ceased being an employee of Ainsworth that the IBEW had the view that Mr. Fellows, when he was a project manager, was not an employee in the bargaining unit represented by the IBEW.

16. As noted at the outset of this decision, Ainsworth had successfully moved to stay the civil action commenced by Mr. Fellows on the basis that Mr. Fellows was covered by a collective agreement at the times material to his civil action. In the material filed on that motion, Ainsworth acknowledged that a project manager is a member of management. Ainsworth asserted that although it had given Mr. Fellows the title of project manager, Mr. Fellows was not in fact a member of management. It contended his duties and responsibilities involved the work of a bargaining unit employee and he was, despite his title, a bargaining unit employee.

17. Mr. Fellows took the position in his statement of claim and before Madam Justice Pollak that he was not an employee in the bargaining unit and was not covered by the Principal Agreement. Ainsworth, relying on the decision of the Ontario Court of Appeal in *Claxton*, successfully argued that the courts do not have the jurisdiction to determine whether the plaintiff in a wrongful dismissal action is an employee coming within the scope of a collective agreement.

Rather, according to Ainsworth, that is an issue that must be determined by an arbitrator under the collective agreement where the defendant employer asserts the plaintiff is an employee covered by that collective agreement.

18. Madam Justice Pollak, in ordering a stay of the constructive dismissal action stated:

> The central issues in this case are whether Fellows was covered by the Collective Agreement and whether his reassignment was in accordance with the Collective Agreement.
>
> The issue of whether Fellows was covered by the Collective Agreement involves an interpretation of the scope of jurisdiction clauses in the Collective Agreement. As well, the issue of whether Ainsworth had the right to transfer him in accordance with the Collective Agreement, requires a review of Ainsworth's management rights set out in the Collective Agreement.
>
> Despite Fellows' evidence with respect to his duties, he did also acknowledge that he did perform some communications trade work, which is under the Collective Bargaining Agreement. He did qualify that he stopped doing such work after he received a letter from Ainsworth on October 13 [sic], 2008. Ainsworth claims that such trade work performed by Fellows falls exclusively within the union's work jurisdiction and scope of the bargaining unit. Ainsworth's position is also reinforced by some evidence of the union on cross-examination, as well as the cross-examination of Mr. Fellows. It is clear that Mr. Fellows believed that he was covered by the Collective Agreement.
>
> I agree with Ainsworth that Mr. Fellows' recourse in these circumstances is to pursue his claim through the union as his exclusive bargaining agent in accordance with the Collective Agreement. Fellows should have and still can challenge the union's decision not to file a grievance on his behalf by filing an application alleging a breach of the duty of fair representation pursuant to the *Labour Relations Act*.
>
> S. 74 of the *Labour Relations Act* provides that the Ontario Labour Relations Board has broad remedial powers, including but not limited to ordering the union to proceed with the grievance and to arbitration if necessary, ordering the union to provide counsel to employee [sic] and ordering the employer to refrain from raising any grievance timeliness issues.
>
> Based on all of the evidence presented, and the submissions of counsel, I find that in this case the core of the jurisdictional dispute between the parties is governed by the terms of the Collective Agreement. It is an issue which must be decided and cannot be avoided to resolve the litigation.
>
> As the Court of Appeal did in the *Claxton* case, I find that this is an appropriate case to stay the proceedings pursuant to Rule 21.01(3)(a) and I therefore so order.

Although Madame Justice Pollak clearly indicated she was not determining whether Mr. Fellows was an employee in the bargaining unit, when she said she agrees with Ainsworth "that Mr.

Fellows' recourse in these circumstances is to pursue his claim through the union as his exclusive bargaining agent in accordance with the Collective Agreement" it appears she had assumed Mr. Fellows is an employee in the bargaining unit for which the IBEW is the exclusive bargaining agent.

19. The Court of Appeal in *Claxton* wrote at paragraphs 15 and 16:

> 15. The preliminary dispute between Mr. Claxton and BML is whether he is covered by the Collective Agreement. If he is, the dispute over his termination will be arbitrated. If he is not, it will proceed in the Superior Court of Justice as a wrongful dismissal action. But the issue whether the dispute is arbitrable, engages squarely the application and interpretation of the Collective Agreement and the motions judge, accordingly, had no jurisdiction to make that determination.
>
> 16. I would expect that the parties - and the union - will co-operate in facilitating a timely, arbitrated determination on whether Mr. Claxton exercised managerial functions or was an "employee" included in the bargaining unit. Thereafter, the appropriate forum for scrutinizing Mr. Claxton's termination can be identified and his remedies pursued. Until that determination is made, it seems to me to be more appropriate to stay, rather than dismiss the action.

Unlike the decision in *Claxton* in which the Court of Appeal "expected that the parties – and the union – will co-operate in facilitating a timely, arbitrated determination", the decision of the Superior Court staying the action of Mr. Fellows suggests it is up to Mr. Fellows and the IBEW to pursue the matter and if necessary, for Mr. Fellows to seek to have the Board use its remedial jurisdiction under section 74 of the Act to order the IBEW to proceed with a grievance and to arbitration for a determination of the issue if the IBEW chooses not to do so. It also appears that Madame Justice Pollak assumed the IBEW would be in violation of section 74 of the Act if it did not file a grievance on behalf of Mr. Fellows and have that grievance arbitrated.

20. Ainsworth, in its submissions before the Board made it clear it would not be seeking to refer the issue of whether Mr. Fellows was a bargaining unit employee to arbitration and moreover said that if the IBEW were to file a grievance and seek to have that issue arbitrated, it would be raising objections to the arbitrability of that grievance on the grounds of delay and timeliness. In other words, there is no doubt that Ainsworth not only would not facilitate a resolution through arbitration under the Principal Agreement of the issue identified in the decision staying the civil action of Mr. Fellows, it would object to any attempt by the IBEW to do so.

21. Ainsworth moves to have the Board dismiss both the section 114 application filed by the IBEW and the section 74 complaint filed by Mr. Fellows on the basis of delay. It argues neither the IBEW nor Mr. Fellows have provided any explanation for waiting to bring their respective applications.

22. Ainsworth contends Mr. Fellows knew or ought to have known in October 2008 or at the latest, June 2009 that there was an issue about his status that should have been grieved. When the IBEW decided not to do so, Mr. Fellows at that point ought to have filed a complaint against the IBEW under section 74. A delay for some two years without any reasonable explanation for

that delay merits the dismissal of the section 74 complaint. See, for example *Sheller-Globe of Canada Ltd.*, [1982] OLRB Rep. Jan. 113, app. for jud. rev. dis'd., (1983), 42 O.R. (2d) 73. Ainsworth submits Mr. Fellows cannot rely on his having initiated a civil action and waiting for the outcome of the motion before filing his complaint and relies on *The Corporation of the City of Mississauga*, [1982] OLRB Mar. 420. Ainsworth points out not only has Mr. Fellows failed to provide an explanation for his delay in seeking relief under section 74, Ainsworth has been significantly prejudiced by that delay. It contends that had the IBEW or Mr. Fellows advised Ainsworth they were taking the position he was not covered by the Principal Agreement before it decided to reassign Mr. Fellows to the working foreman position it would have taken steps to have that matter determined before exposing itself to the claim Mr. Fellows had initiated in court.

23. Ainsworth also submits the section 114(2) application made by the IBEW can only determine whether a person is an employee within the meaning of the Act when that is a question between the parties arising under a collective agreement. It argues there can be no question in June 2011 between the IBEW and Ainsworth with respect to whether Mr. Fellows is an employee because he has not been an employee since July, 2009.

24. Ainsworth contends the Board should not determine whether Mr. Fellows is an employee in the bargaining unit nor should it determine whether he is an employee within the meaning of the Act. Rather, Ainsworth argues the proper approach in this case is for the Board to assume Mr. Fellows is owed a duty by the IBEW and determine whether it breached that duty by not filing a timely grievance. It says the Board should proceed that way because to do otherwise would be usurping the function of the arbitrator. Ainsworth also argues that determining whether the IBEW breached its duty must be based on the facts it knew at the time, that is in either October 2008 or June 2009 and cannot have regard to the facts that have now come to the attention of the IBEW through the litigation initiated by Mr. Fellows.

25. Ainsworth relied on the following passage in *Hussmann Canada Inc.*, 2005 CanLII 8303:

> 11. In theory, the Board could determine whether or not Mr. Gaudet was an "employee in the bargaining unit" for the purposes of determining whether he is a proper applicant under section 74. I decline to do so for two reasons. First, that answer would not determine the more serious question of whether he was an employee who was entitled to a particular benefit under the collective agreement. *Even on the issue of his status as an employee, the Board should not engage in the inquiry. That is really a question of arbitrability, one that an arbitrator should determine.* It is sufficient for the Board's purposes to find, as I do, that there was an arguable claim that he was an employee and that there was a substantial issue that could have been put before an arbitrator. The Board will not, under section 74, determine whether the grievance should succeed. It is enough to conclude that it was a serious matter that the Union could and should have turned its mind to. [emphasis added]

Ainsworth argues that the Board has unequivocally determined, as have the courts, that whether someone is an employee under a collective agreement is a matter for arbitration under the collective agreement. The Board's role in a complaint alleging a violation of section 74 is to determine whether the union acted in accordance with the standard of behaviour established by that section. The Board's role is not to determine the merits of the issue a grievor seeks to have arbitrated.

26. Ainsworth also relies on the Board's decision in *Alcan Aluminium Ltd.*, Board File No. 1883-92-U, decision dated January 31, 1994, unreported, Q.L. cite [1994] OLRD No. 348 in which the Board wrote at paragraph 30:

> …the Board is conscious that its role *is not to interpret the provisions of the collective agreement between the parties, nor to otherwise adjudicate upon the merits of a grievance.* Of course, in many instances, in the course of determining whether the union was in breach of its representation obligations under section 69, it may be necessary for the Board to hear the very evidence or to consider the disputed collective agreement entitlements that are at issue in the grievance. Nevertheless, the Board has on numerous occasions stated that the task of determining whether a union has acted arbitrarily consists of a consideration of whether the union acted "reasonably" in the course of a decision that affects an individual's rights, and not whether the trade union, with the advantage of hindsight, acted correctly. [emphasis added]

27. With respect to the delay issue raised by Ainsworth, I am satisfied Mr. Fellows had no reason to bring an unfair representation complaint against the IBEW when both he and the IBEW shared the same view that he was not an employee under the Principal Agreement because he was a project manager. It was only after the court's decision in April, 2011 suggesting he ought to seek recourse under section 74 to compel the IBEW to pursue the issue on his behalf when it stayed his civil action that Mr. Fellows had any basis whatsoever to bring the complaint against the IBEW. The complaint under section 74 was filed by Mr. Fellows within three months of that date. Allowing less than three months to pass before filing a complaint under section 74 of the Act does not warrant its dismissal.

28. The IBEW was not added as a party to the motion made by Ainsworth to dismiss or stay the civil action commenced by Mr. Fellows. While Mr. Fellows had approached the IBEW in October 2008 and July 2009 to seek its assistance, the IBEW was satisfied he was not an employee under the Principal Agreement because he was a project manager. In my view, up to the time the IBEW learned of the Superior Court's decision staying his civil action, there had been no "question" about whether Mr. Fellows was an employee under the Act.

29. The IBEW acted promptly to get the issue of whether Mr. Fellows was an employee within the meaning of the Act before the Board after the decision of the Superior Court staying the civil action had been released. Waiting less than three months before filing the application under section 114(2) is not a proper basis for dismissing it on the basis of delay.

30. I am satisfied both Mr. Fellows and the IBEW acted promptly once the issue concerning the status of Mr. Fellows crystallized as a result of the Superior Court's decision staying his civil action. I do not accept that the Board should assess delay from either October 2008 or June 2009. Rather it should be from the date of the court's decision staying the civil action. Therefore, the motion to dismiss this consolidated proceeding because of delay is dismissed.

31. It appears to me the question of whether Mr. Fellows was an employee within the meaning of the Act only became a matter of concern to the IBEW when the court decision suggested a project manager position at Ainsworth might well come within the bargaining unit. I note in that regard the comments made by the Board in *London Free Press Printing Company Ltd.*, [1993] OLRB Rep. Oct. 977 at page 979:

> …we note that the Board's section 108(2) [now section 114(2)] jurisprudence makes it clear that a determination by the Board under section 108(2) will not necessarily be determinative of a bargaining unit issue regarding the person(s) whose "employee" (or "guard") status has been determined by the Board. However, to the extent that some Board decisions seem to suggest that a determination by the Board that a person is not an "employee" does not necessarily mean that that person is *not* in the bargaining unit, we disagree. Under the *Labour Relations Act*, only persons who are "employees" within the meaning of the Act can be in a bargaining unit. Persons who are not "employees" may be entitled to benefits under a collective agreement as a result of having been an employee or having some connection with an employee in the bargaining unit covered by the collective agreement (including, for example, persons who have been laid off, retirees, spouses or other family members). However, the scheme of the *Labour Relations Act* is such that only persons who are "employees" can actually be in a bargaining unit. Accordingly, a determination by the Board that a person is not "employee" will also be dispositive of a dispute with respect to whether such a person is in a bargaining unit. That is not necessarily so where the Board finds that the person in question is an "employee".

While the issue of concern to Mr. Fellows is whether he is an employee in the bargaining unit, the question the IBEW seeks to have the Board determine is whether Mr. Fellows, when he was in the project manager position, was an employee within the meaning of the Act. As the Board noted in the *London Free Press Printing Co. Ltd.* decision, a finding that Mr. Fellows is not an employee within the meaning of the Act would also be a determination that he is not in the bargaining unit. See also *Hamilton Health Sciences Corp.*, [2002] OLRB Rep. Sept./Oct. 856; 87 CLRBR (2d) 198 where the Board wrote at page 860:

> 15. However, if parties have a dispute during the course of the collective agreement about whether persons are "employees" under the Act, that dispute can be brought to the Board. There is no obligation on a party, as the employer suggests, to first raise the matter at the bargaining table. Then again, given the limited enquiry the Board will undertake, more effective results may be achieved in negotiations. There is also no obligation that the issue be raised at any particular time, so it cannot be said that CUPE is late in raising it.
>
> 16. As the Board said in *Madawaska Hardwood Flooring Inc.*, [1995] OLRB Rep. Dec. 1451 we only make a determination as to whether someone is an "employee" under the Act. If we conclude that the person is not an employee, that answer is determinative, but if we decide the person is an employee, it will be still left for the parties to agree or take to arbitration whether or not the employee is part of a particular bargaining unit. The Board does not determine which bargaining unit, if any, an employee falls into. That is a question of interpretation of the scope clause of the collective agreement, to be determined by an arbitrator.

Whether Mr. Fellows was an employee in the bargaining unit should the Board find that he was an employee within the meaning of the Act is not a determination the Board would make in a section 114 application. (See *London Free Press Printing Co. Ltd.*; *Hamilton Health Sciences Corp.*; *Madawaska Hardwood Flooring Inc.*, [1995] OLRB Rep. Dec. 1451). That determination, however, would be necessary in dealing with the merits of the complaint against the IBEW under section 74 of the Act

32. The Board has the discretion to determine the best way of proceeding for the purpose of reaching a resolution of the issues in dispute between the parties. See section 2 ¶7 of the Act which states:

> The following are the purposes of the Act:
>
> 7. To promote the expeditious resolution of workplace disputes.

The Board has already consolidated the IBEW application under section 114(2) and Mr. Fellows' complaint under section 74. Sections 74 and 114(2) of the Act provide:

> 74 A trade union …, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union….
>
> 114(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

Section 74 of the Act imposes a duty on the IBEW to represent Mr. Fellows only if he is an employee within the meaning of the Act, and if so, whether he is in the bargaining unit. Ainsworth submits the Board should assume the IBEW has that duty and decide whether its conduct violated that duty. I disagree. It seems to me, in the context of this one consolidated proceeding, that the Board should first determine whether the IBEW owes that duty to Mr. Fellows under section 74 of the Act by deciding whether he is an employee within the meaning of the Act pursuant to section 114(2) and whether he is in the bargaining unit set out in the Principal Agreement.

33. The Board appreciates that determining that issue will also decide the issue the Superior Court in its decision staying Mr. Fellows' civil action held involved an interpretation of the collective agreement. Given the basis for that decision was the Court of Appeal decision in *Claxton*, it appears to me Madam Justice Pollak anticipated that an arbitrator would determine whether Mr. Fellows was covered by the Principal Agreement. However, sections 111(1) and 114(1) of the Act are quite clear. They provide, in part:

> 111(1) The Board shall exercise the powers and perform the duties that are conferred or imposed upon it by or under this Act.

> 114(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it….

In my view, the Board does have the power, if not the obligation, to determine that issue in this consolidated proceeding. In order for the Board to determine whether the IBEW violated section 74 of the Act, it must decide if Mr. Fellows was an employee in the bargaining unit represented by the IBEW. The Board, under section 114(1) has the "exclusive jurisdiction" to determine that issue, which is question of fact or law, in the course of dealing with the section 74 complaint. Similarly, the Board has the "exclusive jurisdiction" under section 114(2) to determine whether Mr. Fellows was an employee under the Act because that question arose and relates to a period during the operation of the Principal Agreement by which the IBEW and Ainsworth are bound.

34. The Board in *Hussmann Canada Inc.* chose not to proceed in that fashion for two reasons: first, the decision on whether the applicant was an employee in the bargaining unit would not be determinative of the issue in dispute in that case and secondly, that issue was a matter of arbitrability of the grievance relating to the grievor's entitlement to benefits. The Board noted arbitrability of the grievance was an issue the arbitrator had the exclusive jurisdiction to determine.

35. In my view, those reasons are not present in this case. Unlike the situation before the Board in *Hussmann*, whether Mr. Fellows is in the bargaining unit, given the decision of the Superior Court staying his civil action, is the only issue between the parties at this time. The arbitrability of that issue is not dependent on whether Mr. Fellows is an employee in the bargaining unit.

36. This consolidated proceeding involves both an application under section 74 and an application under section 114(2). Section 74 imposes a duty on a union to represent "employees". If the Board determines, pursuant to section 114(2) that Mr. Fellows is not an employee under the Act, then the IBEW cannot have violated section 74 in respect of its failure to represent him.

37. Given the unequivocal position taken by Ainsworth that it would challenge the arbitrability of any grievance the IBEW might file seeking a determination of the status of Mr. Fellows on the grounds of delay and a failure to comply with the time limits under the Principal Agreement, it seems to me that when the Board has the authority under the Act to decide the issue the Superior Court and the Court of Appeal have held the courts cannot determine, then the Board should determine that issue when it has the jurisdiction to do so. That is particularly the case when there is a real question whether that issue would be arbitrated given the objections to the arbitrability of that issue Ainsworth will raise.

38. In the result, the Board dismisses the motion by Ainsworth to dismiss this consolidated application seeking relief under sections 74 and 114(2) of the Act. The Board is satisfied it should proceed to deal with whether the IBEW had an obligation under section 74 of the Act to represent Mr. Fellows by determining as of the time immediately before he was taken out of his position as a project manager and assigned to the position of a working foreman whether he was an employee within the meaning of the Act pursuant to section 114(2) and whether he was an employee in the bargaining unit represented by the IBEW.

39. The Board notes the parties had filed affidavits and transcripts of the cross-examination on those affidavits in connection with the motion before Madame Justice Pollak. It would appear that many of the relevant facts may not be in dispute or the disputed facts may not be material to the disposition of this consolidated matter. The Board under section 110(18) ¶¶ 2 and 3 of the Act and Rule 41 of the Board's Rules of Procedure can proceed by way of a consultation to determine the issues in this consolidated matter and can require the parties to prepare comprehensive statements of fact on which they rely.

40. The Board therefore directs Ainsworth to deliver to the other parties and file with the Board on or before Friday January 6, 2012 a statement of fact in which it sets out all the facts and documents on which it intends to rely to establish that Mr. Fellows was an employee in the bargaining unit represented by the IBEW and an employee within the meaning of the Act immediately before it assigned him to the position of working foreman.

41. The Board directs Mr. Fellows to deliver to the other parties and file with the Board on or before Monday January 23, 2012 a statement of fact in which he sets out all the facts and documents on which he intends to rely to establish that he was not an employee in the bargaining unit represented by the IBEW.

42. The Board directs the IBEW to deliver to the other parties and file with the Board on or before Monday January 30, 2012 a statement of fact in which it sets out all the facts and documents on which it intends to rely to establish that Mr. Fellows was not an employee in the bargaining unit and not an employee within the meaning of the Act.

43. If Ainsworth wishes to respond to the statements of fact it receives from the IBEW and Mr. Fellows, it must deliver to the other parties and file its responding statement of fact and documents, if any, on or before Monday, February 12, 2012.

44. While the Board intends to have this matter proceed by way of consultation based on the statements of fact filed by the parties, the parties at the consultation may seek leave of the Board to adduce *viva voce* evidence in respect of any material issues in dispute.

45. This consolidated application is referred to the Registrar to be listed for two days of consultation on or after February 19, 2012 on dates fixed by the Registrar in consultation with the parties.

46. This panel of the Board remains seized with this consolidated matter.

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**1828-10-R; 1829-10-U** Labourers' International Union of North America, Local 625, Applicant v. **Alpine Construction (Windsor) Inc.,** Responding Party

**Certification Where Act Contravened – Intimidation and Coercion – Interference with Trade Union – Application for certification brought without the requisite membership support – The applicant alleged that the employer engaged in conduct to intimidate the employees, interfere with the rights of the employees and interfere with the selection of the union – The union relied on three meetings held during the organizing drive – Two of these**

**meetings were held by the president of the employer, who told the employees that he would not let anyone destroy the company, that subcontractors were available to do the work of the employees, and that if they were going to destroy the company, they should find work elsewhere – The Board found these two meetings to be a direct response to the employer discovering the union drive: these were captive audience meetings and the conduct of the company in those meetings was coercive, intimidating and threatening in a manner that would impair the ability of employees of average intelligence and fortitude to freely express their wishes to be unionized – The Board was not satisfied that the third meeting, held by a senior employee, was an action on behalf of the employer; however, the Board concluded that this meeting was an example of the impact of the earlier anti-union meetings in that employees would conclude that it was acceptable to use the company's premises, hold back employees from their work assignments, and lecture them against unionization – Ultimately, the Board found the union was unable to demonstrate that it had continued its organizing efforts after the violations of the Act occurred – There had been a five week gap between the last card signed and the captive audience meetings – Remedial certification will only be considered where the union is able to show a causal relationship between the employer's unfair labour practice activity and the union's inability to achieve support at the time the application was filed – Declaration granted – Application for certification dismissed**

**BEFORE:** *Lyle Kanee*, Vice-Chair.

***APPEARANCES:*** *Y. Soh* and *D. Bolton* for the applicant; *P. Milloy* and *L. Savoni* for the responding party.

**DECISION OF THE BOARD:** November 2, 2011

**Introduction**

1. Board File No. 1828-10-R is an application for certification brought pursuant to the construction industry provisions, and in particular section 8 of *the Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). In this application, the union acknowledged that it did not have the appearance of membership support from at least 40% of the bargaining unit.

2. Board File No. 1829-10-U is an application filed under section 96 of the Act in which the union alleges that after the responding party, Alpine Construction (Windsor) Inc. ("Alpine" or "the company") became aware of the union's organizing drive it engaged in conduct to intimidate the employees, interfere with the rights of the employees and interfere with the selection of the union, contrary to sections 70, 72 and 76 of the Act.

3. The union relies on three events, which it asserts constitute contraventions of the Act by the company. The first two events relied upon by the union are employee meetings held August 23 and 24, 2010 led by Alpine's President Lou Savoni ("Savoni"). The third is an employee meeting held September 14, 2010 led by a senior employee Angelo Fortuna ("Fortuna"). The union alleges the company's conduct in these meetings resulted in the union's inability to demonstrate 40% or more support for its certification application such that subsection 11(1) of the Act applies. It further submits the only appropriate remedy under the circumstances is for the Board to grant remedial certification pursuant to section 11(2).

4. The company denies its actions violated the Act. Although it admits it was aware of the union's organizing efforts, it denies the meetings on August 23 and 24, 2010 had anything to do with the union. It further denies Fortuna was acting on its behalf at the meeting of September 14, 2010. Alternatively, it denies the conduct in the meetings was coercive, intimidating or threatening. Finally, it submits that if its conduct violated the Act, the violations can be remedied by ordering a representation vote.

5. After carefully considering all of the evidence and the helpful submissions of counsel, the Board concludes the company's conduct in the meetings of August 23 and 24, 2010 violated sections 70, 72 and 76 of the Act. However, the Board finds the union has not established that the company's violations of the Act resulted in the union's inability to demonstrate 40% or more support for its certification application. Accordingly, the request for remedial certification is denied – alternative remedies are provided. The Board's reasons follow.

**Background Facts**

6. Six witnesses testified at the hearing. Savoni, and four employees (Michael Church, Andrew Kincaid, Jari Rasila and Angelo Fortuna) testified on behalf of the company. One employee (Hugh Conaty) testified on behalf of the union.

7. In several instances, the testimony of two or more witnesses differed and it became necessary for the Board to make findings of credibility as between these witnesses. In making this determination, the Board considered the demeanour of the witnesses, the clarity of their evidence, the witnesses' apparent ability to recall events and to resist the tug of self-interest in their responses and what seems most reasonable and probable in all of the circumstances having regard to the evidence as a whole. In both *Comstock Canada Ltd.*, [2004] O.L.R.D. No. 114 and *1318539 Ontario Ltd.*, [2001] O.L.R.D. No. 863 the Board adopted the following test from the decision in *Faryna v. Chorny*, [1951] B.C.J. No. 152, [1952] 2 D.L.R. 354 (B.C.C.A.):

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.
>
> The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion.

8. Alpine is primarily a restoration contractor. Due to severe tornadoes that hit Essex County in June 2010, it was particularly busy in the summer of 2010. It has employed approximately thirteen employees consistently for the past eighteen months.

9. In early July 2010 Savoni was informed by an electrical subcontractor that one of its employees was talking to an Alpine employee about having a union represent the employees at Alpine. Savoni did not discuss this information with any employees and testified he did not think it was a big deal.

10. Several weeks later, Savoni was approached before work by Mike Church ("Church") who asked to meet with him. Church was a junior carpenter employed by Alpine for about eighteen months. Church told Savoni he was approached at his home by union organizers and he wanted Savoni to know before he found out from someone else. Savoni testified Church seemed nervous and Savoni assured him there was nothing to worry about - "everything was cool".

11. Church testified he was approached at his home by two union representatives in May, 2010. He signed a union membership card and later told the union representatives about a few other employees who he thought might be interested in joining the union. That same day he had a brief telephone conversation with fellow worker Hugh Conaty ("Conaty") about his visit from the union representatives and Conaty indicated he also received a visit from union representatives. About one month later, he was working with Conaty and they began talking about the union. Church testified Conaty was upset with Savoni about a few issues including not getting a raise he had asked for and Conaty told him he wanted to bring the union in to "burn the company to the ground" before he left. This negative talk about Conaty's motive for unionizing turned Church off the union. Church had also been talking to his father and father-in-law about their negative experiences with the union.

12. Church spoke to his wife about his growing reservations about the union and his conversation with Conaty. They decided it would be best if he told Savoni the union was organizing the company.

13. When he met with Savoni in early August he did not mention Conaty or his comments about burning the company to the ground. Church simply told Savoni that a union was forming in the company and he did not agree with it.

14. During cross-examination, Church disclosed that after telling Savoni about the union, he asked for a raise in his wages of $6.50 from $18.50 to $25.00 and Savoni granted his request. Savoni made no mention of granting a raise to Church when he testified about his meeting with Church. In fact, Savoni testified that after Church told him about the union, Savoni did not ask him any questions and there was "nothing more to talk about". He simply told Church things were cool and his job was not in jeopardy.

15. Savoni testified he did nothing about the union organizing drive after being informed by Church and there was no evidence to the contrary before the meetings of August 23 and 24, 2010.

16. Savoni testified that on Friday, August 20, 2010, a carpenter named Andy Kincaid ("Kincaid") came to see him at his office at the end of the workday. Kincaid was upset and told

Savoni he was tired of people saying they were going to hurt the company and bankrupt it. Savoni could not recall Kincaid mentioning who was saying these things and in his evidence-in-chief Savoni said Kincaid did not say anything about the union in this conversation. According to Savoni the union drive was "not even in (his) train of thought". Rather, Savoni, who was stunned by the mention of "bankruptcy", assumed that the way someone would hurt the company and bankrupt it, would be by stealing valuables from customers' homes while they were doing restoration work. This was purely speculation on Savoni's part because Kincaid did not say anything about stealing. Savoni told Kincaid he would hold a meeting the following Monday to talk to the employees and clear the air.

17. Savoni's evidence-in-chief did not correspond with the reply the responding party filed on September 21, 2010 which reads in part:

> On August 20, 2010 Mr. Savoni was approached by an employee, Andy Kincaid, who advised that he was tired of hearing about "union stuff". Mr. Savoni attempted to calm Mr. Kincaid down about the matter. However, during the conversation Mr. Kincaid advised Mr. Savoni that he could not believe "the guy wants you to fail and hopes the Company goes bankrupt".

18. On cross-examination Savoni agreed that the filed reply was likely accurate but he could not recall Kincaid mentioning the union and he could not recall Kincaid identifying any employee in particular who said he was going to harm or bankrupt the company. Once he heard the word "bankrupt", Savoni claimed he shut everything else out.

19. Savoni's testimony also does not correspond with the testimony of Kincaid. Kincaid had no interest in being represented by a labourers' union. In late July or early August, Kincaid had a conversation with Conaty who told Kincaid he was unhappy with the company and wanted to bring a union in to make the company fail. A couple of weeks later, Kincaid had a conversation with another employee named Dominic Valentino ("Valentino") who was complaining about the company, said it was going to go bankrupt and that he didn't care anymore. Valentino did not mention the union and Kincaid viewed the conversations with Conaty and Valentino as unrelated. At the end of work, on the day of the conversation with Valentino, Kincaid went to speak to Savoni.

20. Kincaid testified he told Savoni he was hearing a lot of stuff on the job about the union drive, the company failing and bankruptcy. He specifically identified Conaty and Valentino: Conaty wanted to bring the union in to make the company fail; Valentino thought the company was going to go bankrupt. He did not tell Savoni anyone was trying to bankrupt the company.

21. Savoni held a meeting of all hourly employees on the morning of August 23, 2010 in the project coordinators' office. Employees attend at the office each morning to obtain their work assignment for the day. Savoni told the project coordinator to ask them to remain in the office so he could address them. He was very emotional and avoided making eye contact with anyone. He began by telling the employees he knew he needed to be careful about what he said because there were federal or provincial laws that applied. Savoni claimed this was a reference to Bill 168 (An Act to amend the *Occupational Health and Safety Act* with respect to violence and harassment in the workplace). He said he heard that someone was unhappy with the company and was going to harm it. He would not let that happen and if someone was unhappy they should "get the fuck

out". Savoni confirmed he said the following statements that are repeated in the responding party's reply:

> - that if employees were trying to make the company go bankrupt then they were not part of the team and they needed to grow some balls, man-up and "get the fuck out";
>
> - that if employees were not happy working for the company they could talk to him, he would give them two weeks severance and lay them off so that they could collect unemployment while they looked for another job and that he would give them a reference;
>
> - that he had been loyal to employees and now felt that he was being "stabbed in the back".

22. Savoni testified he told the employees he always had subcontractors lined up outside the company's doors to do work for the company but chose not to use them in the past.

23. On August 24, 2010 Savoni held another meeting with all of the hourly employees in which he largely repeated what he said in the meeting on August 23. He held the second meeting because two employees, Church and Valentino, were absent for the first one. When Savoni finished his address at the second meeting, one of the employees asked who was giving the union employees' addresses. Savoni responded that it was not the company so "it must be one of you assholes". He also indicated he heard rumours that at least three different employees were giving the union this information but he did not name them. Someone else asked a question about how many employees the union had to sign up and Savoni said he would talk to the company's lawyer to get clarification.

24. Savoni denied his meetings had anything to do with the union drive. He testified he held the meetings because he was worried someone was going to harm his company by stealing from customers' homes. He did not mention stealing in the meetings. He did not do anything other than conduct the meetings to address his concern about stealing. Savoni admitted it was understandable if employees inferred he was talking about the union in his meetings but that was the furthest thing from his mind.

25. The evidence of the employees called by the responding party about the meetings of August 23 and 24, 2010 was remarkably unhelpful. Church testified he missed the first meeting because he was infected with poison ivy and was so tired and medicated during the second meeting that he could not recall anything about it. Kincaid testified Savoni was talking about "this union stuff and everything". He recalls Savoni was upset but not what he said. Fortuna, the longest serving of the company's hourly employees, recalled Savoni saying he pays his employees well and if anyone was not happy they should go and he would pay them two weeks severance. Otherwise, Fortuna did not recall anything about the meetings and initially did not recall that there was a second meeting. Jari Rasila ("Rasila"), a long serving carpenter who had no interest in joining the union, testified he recalled Savoni being upset in the first meeting and saying he had heard someone wanted to bankrupt the company and to make it fail. Savoni said he had kept employees employed during tough times while other companies had locked their doors and now he felt like someone had stuck a knife in his back. He did not recall Savoni referring to any legislation or to subcontractors. The second meeting was a repeat of the first but more "light-hearted".

26. Conaty recalled the meeting much as Savoni testified, however, he also recalled Savoni saying he would padlock the doors before letting someone hurt his company. Savoni and the other employees called by the company deny this statement was made by Savoni. Although Savoni did not use the word "union" in the two meetings, Conaty thought he must have been referring to the union as the source of the harm to the company.

27. On September 14, 2010, following the filing of the union's application for certification, another meeting of the hourly employees took place in the project coordinators' office. Employees were in the office picking up their job assignments for the day. Tony Savoni, a project coordinator, closed the door of the office as he departed the room after handing out the assignments and Fortuna began talking to the group about the union drive. Fortuna began his comments by denying he was Savoni's "puppet", as he believed that was how a number of employees perceived him. He referred to his own, and his wife's, negative experiences with unions in the past. Fortuna was angry and spoke very negatively about unions generally and against the need for one at Alpine. Fortuna asked a number of the employees if they agreed with what he was saying and several nodded in agreement.

28. Savoni was not at the office when the meeting took place. He testified he was at the dentist's office that morning and received a text message on his cell phone from one of the estimators who told him the meeting was taking place and later told him it had gotten a little loud. Savoni assumed the meeting was about the union. Fortuna denied he had spoken to Savoni about the meeting either before or after it occurred. Savoni also denied any knowledge of the meeting before it occurred.

29. Conaty testified that after the meetings of August 23 and 24, 2010 he got the feeling his co-workers were shunning him. Rasila, who was a friend of Conaty and the Health and Safety representative at the company, went to Savoni in September and told him he thought people were pointing their finger at Conaty and treating him like a pariah. Savoni decided to have a meeting to discuss Bill 168 and the company's harassment policy. At that meeting, Savoni told the employees it was time to "let things go" and "it doesn't matter anymore". No specific reference was made to Conaty at the meeting. A short time later, Rasila was working with Conaty in the field and he told Conaty that Church had received a raise. Upon hearing that news, Conaty decided to resign and took a job arranged by the union with a unionized company.

### Alleged Violations of the Act

30. The first issue to be determined in this case is whether the evidence before the Board establishes that the responding party violated sections 70, 72 and 76 of the Act, which provisions read as follows:

> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

...

> **72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,
>
> (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
>
> (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
>
> (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.
>
> ...
>
> **76.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

31. The company agrees that under section 96(5) of the Act it bears the onus of proof that it did not violate the Act in the manner alleged by the union. Section 96(5) reads as a follows:

> **96.** (5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

32. With respect to the meetings with hourly employees on August 23 and 24, 2010, the responding party submits Savoni was not talking about the union doing harm to the company; but even if Savoni was referring to the union, his statements were not unlawful in that they were not coercive, intimidating or threatening of employees' job security.

33. The Board finds, on a balance of probabilities, Savoni's meetings on August 23 and 24, 2010 were a direct response to news he received from Kincaid about the union drive. Savoni's testimony that the union was "not even in his train of thought" and that he held the meetings because of a concern that employees were going to steal from customers' homes is not credible. Kincaid did not suggest anyone was going to steal from customers. He didn't even say that someone was trying to bankrupt the company. He talked about Conaty wanting to harm the

company by bringing in a union and Valentino saying he thought the company was going to go bankrupt and he didn't care. Several witnesses testified that around this time, talk of the union was rampant.

34. It is not credible that Savoni would hold meetings to address his concern that employees intended to steal from customers' homes, yet not talk about that concern. Instead, he talked about his loyalty to his workers, the availability of subcontractors to do their work, his sense that he was being stabbed in the back, and bankruptcy.

35. Kincaid's brief description of the meetings was that Savoni talked about "union stuff". It is reasonable to infer that the employees at the second meeting, who asked how the union got employees' addresses and how many employees needed to sign up with the union, also thought Savoni was talking about the union in his meetings. Certainly no employees testified they thought Savoni was talking about employee theft. As Savoni admitted, it was reasonable for the employees in attendance to assume he was talking about the union.

36. During his testimony Savoni tried to leave the Board with the impression that he was indifferent to being unionized. Yet, when asked in the second meeting how the union got employees' addresses, he said "it must have been one of you assholes" and he speculated that it was one of three employees.

37. When Savoni repeatedly said in the meetings that unhappy employees should "get the fuck out", the Board concludes he was telling those who supported the union to leave the company. And when he referred to employees wanting to bankrupt the company, he was again referring to employees who wanted to unionize the company. No other reasonable explanation was offered for these references. Again, the suggestion that he was talking about employees who wanted to bankrupt the company by stealing from customers' homes is implausible.

38. Savoni began his first meeting by noting he needed to be "careful" about what he said because there was legislation that restricted him. Savoni's testimony that he was referring to Bill 168 is not credible. If he was worried his comments would be viewed as harassment, one would not expect him to call his employees "assholes" or repeatedly tell them to "get the fuck out". Having concluded Savoni held his meetings to respond to the union drive, the Board concludes the legislation he was referring to was the Act and the protections afforded to employees under the Act. Savoni was being "careful" by not mentioning the word "union" but a reasonable employee would conclude he was talking about the union drive and on the evidence, a number of those in attendance clearly thought he was.

39. Section 70 of the Act limits an employer's freedom of expression by prohibiting the use of "coercion, intimidation, threats, promises or undue influence." The responding party submits that even if Savoni was referring to the union drive in his meetings, he said nothing that violated those prohibitions. The Board disagrees.

40. Labour boards have commented frequently on the employer communication strategy known as the "captive audience" meeting. Adams, *Canadian Labour Law*, 2d ed. (Looseleaf: Canada Law Book: 2011) describes the indicia of captive audience meetings at 10.1080:

> Canadian labour relations boards have devoted special emphasis to a particular employer tactic during an organizing drive – the "captive audience" meeting. These assemblies tend to share the following characteristics: the irregularity in the workplace routine of the summons to attend; the holding of the meeting during working hours often on company property; no deduction in pay; the presence and participation of management; as well as the discussion of working conditions, company performance and, at least indirectly, management knowledge of the organizing activities of the trade union and its probable effects on the company and the employees. Actual or implied threats of lay-offs or plant closures or other threats to job security, alteration of benefits or privileges and change in the tenor of management-employee relations if a union is certified are also distinctive in the context of such speeches. Because of the employer's dominant economic position, captive audience meetings provide a very effective forum for influencing the employees' exercise of statutory rights, particularly because the union is afforded no real opportunity to reply. It is of no avail for the employer to claim employees are free to leave such a meeting because an employee with average conviction would probably be disinclined to reveal sympathy for a union, which a departure would imply…

41. In *Vogue Brassiere Incorporated*, [1983] OLRB Rep. October 1737, this Board acknowledged the powerful influence that can be conveyed through the means of a captive audience meeting:

> 44. We turn now from the content of an employer's message to the medium by which it is delivered. The term captive audience has frequently been applied to meetings convened by management during working hours. Although the Board has refrained from holding a speech delivered at such a gathering to be a per se violation, the existence of a captive audience has often been relied upon in conjunction with the speakers comments, to find an unfair labour practice. See, for example, *Sun Tube of Canada Limited (Ottawa)*, [1962] OLRB Rep. Apr. 28; and *Bell & Howell Canada Ltd.*, [1968] OLRB Rep. Oct. 695. Conversely, the absence of a captive audience has been cited as a reason for not finding a violation of section 64. See *Greb Industries Limited, supra* and *Alcan Building Products Limited, supra.*
>
> 45. The rationale given by the Board for looking askance at captive audiences is that employees who are required to attend a meeting may readily conclude they are expected to adhere to the employers views stated there. See *Mitten Industries Gait Limited*, [1979] OLRB Rep. Mar. 154. Commentators have noted two other possible objections to captive audiences. Employees are not free to refuse to listen to the employer in this forum, whereas in our society freedom of speech is generally counterbalanced by freedom not to listen. In addition, the vehicle of a captive audience is available only to management: a union rely upon contacts outside the work place, a strategy which may be particularly burdensome in large bargaining units. Labour law scholars have identified the third concern as the most important.
>
>> The point is not that the union and the employer have the same right to deny each other permission to address employees assembled in their respective "forums"; rather, it is that the employer has the power, derived from the employment relation, to compel employees to listen,

> and that the union has not. It cannot make employees come to the union hall to hear a pre-election exhortation, even assuming the unlikely fact that there is often such a meeting place conveniently at hand. (Aaron, "Employer Free Speech: The Search for Policy" in *Shister et al* (Eds), Public Policy and Collective Bargaining (1962), at 51.)

See also D. J. Doorey, "The Medium and the Anti-Union' Message: 'Forced Listening' and Captive Audience Meetings in *Canadian Labour Law*" (2008), 29 Comp. Lab. Law & Policy J. 79 in which the argument is advanced that forced listening in captive audience meetings is, in itself, a distinct form of expression that interferes with employees' free choice.

42. In this case, the company held two meetings on two consecutive days, on the company's premises, led by the company's president. Employees were asked by the project coordinator not to leave after receiving their assignment and to stay in the room for a meeting with the president. The Board has no hesitation in finding that attendance at these meetings was compulsory. By all accounts, this was an unusual event. The president was emotional, his voice was cracking and he used strong language to convey his message. His message was essentially the same at both meetings, such that eleven of thirteen employees were compelled to hear the message twice in two days.

43. Savoni told his employees he heard someone was out to destroy the company, to bankrupt it. The unstated part of that assertion was the "means" by which the company would be destroyed or made bankrupt. As discussed above, the Board finds Savoni intended and the employees would (and on the evidence, did) reasonably infer that the means he was discussing was unionization. The message was clear – unionization would destroy or bankrupt the company.

44. Savoni told the employees he would not let anyone destroy the company. The reasonable inference from that statement was he would not let anyone unionize it.

45. Savoni said there were subcontractors available to do the work of his employees. The reasonable inference from that statement, in the context of his entire presentation, was he would subcontract out the work, before permitting anyone to unionize the company.

46. Savoni repeatedly told employees that if they were going to destroy the company they should "get the fuck out". The reasonable inference from this statement was there was no place in the company for employees who supported the union. Union supporters were "assholes".

47. In *Viceroy Contruction Company Limited*, [1977] OLRB Sept. 562, the Board considered the contents of two letters written by the employer and circulated to employees prior to a certification vote that, among other things, made references to other companies that closed after being unionized:

> 15. The question before the Board is whether the effect of the employer's message as embodied in the two letters and the attached clippings would be to coerce, intimidate, threaten or unduly influence a reasonable employee so as to deprive him of the ability to vote freely in the selection or rejection of trade union representation by the applicant. We are satisfied that the message conveyed by the employer would have that effect.

> 16. The line between legitimate persuasion and unlawful intimidation is not susceptible of any precise definition in the abstract. It falls to be determined on the totality of circumstances in each particular case whether the standards of restraint imposed by *The Labour Relations Act* have been exceeded. The facts at hand extend beyond the line of what is permissible.
>
> 17. The repeated references to job security that appear in the employer's letters coupled with the spectre of another plant closing under a cloud of unresolved allegations of union busting raises what in our view must reasonably be perceived as a veiled threat to employment security by any employee who has a normal desire to keep his job.

48. After considering the totality of the evidence, the Board concludes the company violated sections 70, 72(c) and 76 of the Act in the captive audience meetings of August 23 and 24, 2010. The conduct of the company in those meetings was coercive, intimidating and threatening in a manner that would impair the ability of employees of average intelligence and fortitude to freely express their wishes to be unionized.

49. The Board is not satisfied that at the meeting of September 14, 2010, Fortuna was "acting on behalf of the employer" or that the statements of Fortuna were coercive or intimidating. However, the Board considers the Fortuna meeting an instructive example of the impact of the earlier meetings led by Savoni. Following those meetings, employees like Fortuna, would reasonably understand that it was perfectly acceptable to use the company's premises, hold back employees from their work assignments, and lecture them against unionization.

**Appropriate Remedy**

50. Section 11 of the Act provides as follows:

> **11.** (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,
>
> (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
>
> (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.
>
> (2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,
>
> (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
>
> (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

(c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.

(3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).

(4) On an application made under this section, the Board may consider,

(a) the results of a previous representation vote; and

(b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

51. As there has been no representation vote held in this case, the Board must consider whether, as a result of the company's contraventions of the Act, the union was not able to demonstrate 40% support in its application for certification.

52. Alpine argues there is no evidence its conduct in the captive audience meetings of August 23 and 24, 2010 affected the union's ability to obtain 40% support for its certification application. It relies upon the decision in *K.D. Clair Construction Ltd.,* [2008] OLRB Rep. Jan./Feb. 60 in which the Board concluded the union had failed to establish that the employer's unfair labour practice resulted in its inability to demonstrate 40% support for its certification application. Alpine notes that no direct evidence was called by the union about difficulties it faced in obtaining support following the employee meetings.

53. The union submits it is not required to adduce direct evidence of its efforts to garner support for its application after the commission of the unfair labour practices. It relies upon the decision in *Islington Nurseries Limited,* [2010] O.L.R.D. No. 1867 in which the Board declined a request for particulars by the employer for the names of employees the union contacted after the termination of the union's key organizer. The Board stated that the determination of whether the unfair labour practices resulted in the union's inability to sign-up members or not would be made by application of the Board's "objective test" and the responses of employees to the union organizers would add nothing.

54. The Board concludes that a union does not necessarily need to call direct evidence of unsuccessful efforts to obtain 40% support for its certification application after the commission of unfair labour practices in order to satisfy subsection 11(1)(b). In *JAK Electrical Contractors Limited,* [1997] OLRB Rep. July/August 578 the Board addressed an argument made by the employer that an objective test was applicable to situations where a vote had not yet taken place but that a subjective test should apply in situations where a vote had been completed and the union had been unsuccessful. At that time, the legislation required the Board to determine whether "(t)he result of the contravention is that a representation vote does not or would not likely reflect the true wishes of employees in the bargaining unit about being represented by the trade union". The Board expressed concern about the untrustworthiness of evidence of employees who testified that the unlawful conduct of their employer did not affect their ability to express their true wishes in a representation vote. The Board also expressed concern about

maintaining the confidentiality of employees supporting the union. The Board concluded an objective test was appropriate in both situations.

55. The objective test has been applied by the Board to the current subsection 11(1)(a). In *Carlos Barbosa Concrete Limited*, [2008] OLRB Rep. May/June 334, the Board confirmed the subsection required an objective assessment of the objective facts of the events preceding the representation vote and not an assessment of the subjective views of employees which it considered "inherently untrustworthy" (paragraph 60). See also *Riverstone Masonry Inc.*, [2009] OLRB Rep. Jan/February 120 at paragraphs 27 and 28.

56. The rationale outlined in *JAK Electrical Contractors Ltd., supra*, for the Board adopting an objective test to its assessment of the impact of the violations of the Act upon a representation vote apply equally to the Board's assessment upon a union's ability to demonstrate 40% support for its certification application. As the Board said in *Islington Nurseries Limited, supra*:

> 23. Clearly then, for section 11 to be applicable, the violations of the Act must be linked to the employees' inability to express their true wishes and/or the union's inability to sign-up members. However, and as these parties both agree, in determining what effect of any violations of the Act have had, the Board uses an objective test. In essence, the Board decides what the likely reaction (to the violations) of a reasonable employee would have been. As such, evidence concerning the subjective views of employees, as expressed to an organizer and/or anyone else, is not particularly helpful to the decisions the Board must make. This is obviously the case as the entire premise underlying relief under section 11 of the Act is that, following and as a result of the violations, the employees concerned have been prevented from expressing their true wishes.
>
> 24. This is not to say that evidence concerning contact between a union and employees which occurred after the alleged violations will never be relevant or useful in the context of a claim for relief under section 11 of the Act. However, in order for such evidence to be relevant and useful it must relate to the findings that the Board has to make in applying the objective test concerning the link between the violations and the true wishes of the employees and/or the ability of the union to sign-up members. For example, where the alleged violations occurred at the very early stages of an organizing campaign, a union may wish to lead such evidence in order to satisfy the Board that it was attempting to organize. Alternatively, and particularly with respect to long organizing campaigns, a union may wish to lead such evidence to convince the Board that its organizing activities had not effectively ceased before the alleged violations occurred. Further, such evidence might be relevant in establishing whether or not an employer and/or employees were aware an organizing campaign was under way at the time of the alleged violations and/or whether the employees were aware of the violations in order to establish that a reasonable employee would have seen the violations as being connected to the organizing campaign.
>
> 25. The above noted examples are not intended to be an exhaustive list of how and why evidence of contact between a union and employees occurring after the violations took place might be relevant to the Board's analysis under section 11 of the Act. What they do, however, is make clear that in order to

> be relevant the proposed evidence must relate to some aspect of the objective test the Board must apply. In this case, given the specific circumstances before me, it is clear that the Union's proposed evidence of such post-violation contacts is not necessary or useful to any of the decisions I must make.
>
> ...
>
> 28. Ultimately, there will be a number of factual and legal determinations which will have to be made in these matters. However, assuming that the Board finds that the Act has been violated, the Union's pleadings concerning what employees may or may not have said to Union organizers after those violations took place is of no real assistance to the Board in making any of these determinations. Specifically, if violations of the Act are found, I will have to determine if they resulted in the Union's inability to sign-up members or not but that decision will be made using the Board's objective test to which, given these circumstances, the responses of employees to Union organizers would add nothing. ...

57. In this case, the Board has no hesitation in finding that the conduct of the company in the captive audience meetings would have a chilling effect on the union's efforts to organize the company's employees and would frustrate any on-going efforts to obtain 40% support for the union. This is supported by the evidence that after the meetings, Conaty, who had been the key employee supporter of the drive, was shunned by his coworkers, to the extent that Rasila felt Conaty was being harassed and treated like a pariah.

58. However, *Islington* also makes it clear that the Board must be satisfied the union was attempting to organize, and that it had not abandoned its organizing efforts, when the violations of the Act occurred. In *Islington*, the Board reviewed the membership evidence submitted in support of the application and determined that most of the membership cards had been signed in the week immediately prior to the unlawful termination of the union organizer. On that basis, the Board was satisfied the union's organizing campaign "had started, and was continuing, at the time when the key violation is alleged to have occurred."

59. In this case, the Union chose to call no direct evidence about the state of its organizing efforts at the time of the captive audience meetings. Instead, the Union directed the Board to consider the membership evidence filed in support of its application. A review of that evidence reveals the Union submitted four signed membership cards representing approximately 30% of the employees in the bargaining unit. The first was signed in May 2010 and the last on July 19, 2010. There is therefore a five-week gap between the last card signed and the captive audience meetings.

60. The granting of remedial certification is an extraordinary remedy. In *Manor Cleaners Limited,* [1982] OLRB Rep. Dec. 1848 at paragraph 21, the Board expressed this note of caution: "If the union has mustered the totality of its support in the bargaining unit, certification under section 8 should not be used to foist union representation on those employees who would not have chosen this freely for themselves. The assessment must be taken with care."

61. The Board acknowledges that it is likely the company conducted the captive audience meetings because it perceived the union's organizing campaign was ongoing. However, given

the long period of time between the signing of the first and last membership cards and a five-week gap between the last membership card being signed and the captive audience meetings, it is also possible that the union's campaign efforts were exhausted by the time of the meetings. Given the extraordinary nature of the relief claimed, it would be inappropriate for the Board to resolve this evidentiary gap by speculating about the status of the union's organizing campaign at the time of the violations. The onus rests with the union and it has failed to establish that its campaign was ongoing at the time of the violations. There is therefore insufficient evidence for the Board to find a causal link between the company's unlawful activity and the union's inability to obtain 40% support for its application. Relief pursuant to section 11(2) of the Act is therefore not available to the union in this case.

61. [sic] To remedy the violations of the Act described above, the Board directs Alpine to do the following:

(1) cease and desist violating the Act;

(2) post this decision and the attached Notice in a location or locations where they are likely to come to the attention of the employees and to leave this decision and the Notice posted for a period of sixty (60) days. Alpine is to make every reasonable effort to insure that the posted decision and Notice are not defaced or obscured in any way;

(3) give reasonable access to the applicant to its premises at reasonable times so that the applicant can satisfy itself that the posting requirements are being complied with;

(4) forthwith send a copy of this decision and the attached Notice to each of the employees in the proposed bargaining unit above at their home address by regular mail;

(5) provide the union with a list of names and addresses of all company employees, other than those excluded from the bargaining unit, and keep the list updated on a monthly basis for a period of six months; and

(6) provide two representatives of the applicant with an opportunity to address the employees in the proposed bargaining unit, out of the presence of any member of management, during normal working hours without loss of pay, for a maximum of one hour. Employees shall be directed by Mr. Savoni that attendance at the meeting is mandatory. The meeting shall be held at a time reasonably chosen by the applicant within the next six months.

62. The union's application for certification is dismissed.

## Appendix "A"
## The Labour Relations Act, 1995

# NOTICE TO EMPLOYEES

## Posted by order of the Ontario Labour Relations Board

This Notice has been posted in compliance with an Order of the Ontario Labour Relations Board issued after a hearing. The Board has determined that Alpine Construction (Windsor) Inc. ("Alpine") violated the *Labour Relations Act, 1995*.

## The Board informs employees of the following:

All employees in Ontario have these rights which are protected by law:

> An employee has the right to join a trade union of his or her own choice and to participate in its lawful activities.
>
> An employee has the right to oppose a trade union, or subject to the union security clause in the collective agreement with his or her employer, refuse to join a trade union.
>
> An employee has the right not to be discriminated against or penalized by an employer or by a trade union because he or she is exercising rights under the *Labour Relations Act, 1995*, as amended.
>
> An employee has the right not to be penalized because he or she participated in a proceeding under the *Labour Relations Act, 1995*, as amended.
>
> It is unlawful for employees to be fired or in any way penalized for the exercise of these rights. If this happens, a complaint may be filled with the Ontario Labour Relations Board.

It is unlawful for anyone to use intimidation to compel someone else to become or refrain from becoming a member of a trade union, or to compel someone to refrain from exercising rights under the *Labour Relations Act, 1995*, as amended.

**This is an official Notice of the Board and must not be removed or defaced.**
**THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS.**
**Dated this 2nd day of November 2011**

**2090-10-R** Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Brennan Paving & Construction Ltd.**, Responding Party

**Certification – Construction Industry – Status – In this card-based application for certification, the parties had agreed some of the disputed employees had been dispatched to the work site by the employer and/or the union while others were hired locally – The employer was applying the terms of a pre-existing collective agreement and argued that all of the employees were already covered by the cross–over provisions of that agreement – Since employees can only be in one bargaining unit at a time, they should not be able to vote to determine the bargaining agent in a different bargaining unit – The Union's position was that the employees were not covered by any collective agreement when working in that particular Board area and therefore the cross–over clause did not, and could not, create bargaining rights for them – The Union further argued that the application of the terms of another collective agreement to these employees did not equate to the Union having acquired bargaining rights – The Board held the dispatched employees were bound by the cross–over provisions of the existing collective agreement and their membership evidence was to be excluded – The employer was not obligated to apply the terms of the existing collective agreement to the locally hired employees and therefore these employees were eligible to vote – Matter continues**

**BEFORE:** *John D. Lewis*, Vice-Chair.

***APPEARANCES:*** *Yu-Sung Soh, Eric Traves* and *Max Way* appeared for the applicant; *David L.W. Francis, Sarah Goodman* and *Rick Tamburro* appeared for the responding party.

**DECISION OF THE BOARD:** November 21, 2011

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that the applicant elected to have dealt with under section 128.1 of the Act. This application was filed on September 28, 2010.

2. Pursuant to the Board's decision of November 17, 2010, (differently constituted), a hearing was conducted in this matter in order to deal first with the status of eleven (11) individuals whom the responding party asserts should not be on the list of employees in this application on the basis that they were referred to work and already working under a collective agreement. At the hearing the parties put forward an "Agreed Statement of Facts and Brief of Document" which is as follows:

OLRB FILE NO. 2090-10-R

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

BETWEEN:

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
ONTARIO PROVINCIAL DISTRICT COUNCIL

("Applicant" or the "OPDC")

AND

BRENNAN PAVING & CONSTRUCTION LTD.

("Responding Party" or the "Employer")

## AGREED STATEMENT OF FACTS AND BRIEF OF DOCUMENT

1. The parties agree that the following facts are true or not disputed and that the facts and documents referred to hereunder and attached hereto may only be relied on by the Board and/or the parties for the purposes of determining the issue of the status of certain employees identified herein based on the Responding Party's position that they are not eligible to be included on the list of employees for the purposes of this Application.

### The Collective Agreement

2. At all material times, to the extent Universal Workers Union, LIUNA 183 ("Local 183") has bargaining rights for the Responding Party, the Responding Party was bound by and subject to the Toronto Area Road Builders' Association collective agreement with Universal Workers Union, LIUNA 183 ("Local 183") (the "TARBA" agreement). Local 183 is a constituent member of the Applicant. A copy of the TARBA agreement is attached hereto as Schedule 1. The TARBA Agreement was effective May 1, 2010 and expires April 30th 2013. The TARBA Agreement is subject to an Accreditation Order under the Labour Relations Act, 1995 for Local 183 that covers Board Areas No. 8 and 18 and TARBA is the Accredited Employers Association.

3. Article 2 of the TARBA agreement, in part, recognizes Local 183 as the exclusive bargaining agent for a bargaining unit consisting of all construction labourers of the Responding Party save and except non-working foremen and those above the rank of non-working foreman. While the TARBA agreement is accredited for Board Areas No.8 and 18, it also purports to cover all construction labourers working in Ontario Labour Relations Board Areas # 9, 10 and 11, save and except non-working foremen and those above the rank of non-working foreman. Board Areas #9, 10 and 11 and/or the application of the TARBA agreement in those areas is not relevant in this matter.

4. Article 3.06 is the Local 183 union security clause and includes requirements that "all employees when working in a position within the bargaining unit of Local 183" shall be members in good standing of Local 183.

5. Article 8 of the TARBA agreement provides that "all terms and conditions" set out in the TARBA agreement "will be maintained" for employees when they work in a Board Area in which they do not regularly work, including any Board Areas not referred to in the TARBA agreement.

6. The TARBA agreement does not require the Responding Party to assign work outside of the Board Areas to which it applies to members of Local 183 but, as outlined above, provides for the continued application of

the TARBA Agreement and its terms and conditions to Local 183 members when they are assigned to work outside of those Board Areas.

**The Certification Application**

7. On September 28, 2010, the OPDC filed an application for certification to represent a bargaining unit of construction labourers employed by the Responding Party in the non-ICI sectors of the construction industry in Board Area 28.

8. On the application filing date, the Responding Party had three active jobsites in Board Area 28. The Responding Party asserted in its response that, on these jobsites it employed what it identified as two groups of employees:

(a) Twenty-six (26) individuals identified on "Schedule A" to the Application who were individuals hired locally and not employed pursuant to the TARBA Agreement; and

(b) Eleven (11) individuals identified and listed at paragraph 12 of the Response, being:

(i) Don Bailey ("Bailey")

(ii) Felipe Fernando ("Fernando")

(iii) John Harder ("Harder")

(iv) Mike Horvath ("Horvath")

(v) Derrick Lennox ("Lennox")

(vi) William McCurtan ("McCurtan")

vii) Donald McLaughlin ("McLaughlin")

(viii) Damian Okelly ("Okelly")

(ix) Tim Rodgers ("Rodgers")

(x) Ray Schmachtel ("Schmachtel")

(xi) Tony Stagliano ("Stagliano")

(collectively the "Paragraph 12 Employees")

(c) The Responding Party, in its Response, and in all submissions thereafter, has asserted that the Paragraph 12 Employees should not be included on the list of the Employees for the purposes of the instant Application, due to their employment pursuant to the TARBA Agreement. Subject to certain "standard" status disputes issues with respect to Harder and Stagliano, the Applicant's position has been that "there is no legal reason to exclude these employees from the bargaining unit" in this Application.

9. The Paragraph 12 Employees are all members of Local 183. At the request of the Responding Party, Local 183, either directly or through other Locals of the Applicant, dispatched **some** of the Paragraph 12 Employees to the Responding Party. They were then sent by the Responding Party, at some point prior to the Application Filing Date, to the Highway 26 jobsite in Board Area No. 28. The Applicant asserts, and the Responding Party does not contest for the purposes of these agreed facts and the determination of this issue only, **that some of the Paragraph 12 Employees were not dispatched nor cleared through Local 183 but were in fact hired by the Responding Party at the jobsite.** Each of the Paragraph 12 Employees commenced employment with the Responding Party on or around the following dates:

(a) Bailey: June 21, 2010;

(b) Fernando: September 13, 2010;

(c) Harder: March 13, 2006;

(d) Horvath: August 23, 2010;

(e) Lennox: June 21, 2010;

(f) McCurtan: July 26, 2010;

(g) McLaughlin: September 7, 2010;

(h) Okelly: July 26, 2010;

(i) Rodgers: March 29, 2010;

(j) Schmachtel: March 15, 2010;

(k) Stagliano: May 3, 2010.

[emphasis added]

10. At all times, and in accordance with Article 8.02 of the TARBA Collective Agreement, the Responding Party adhered to the terms and conditions of employment established pursuant to the TARBA Agreement with respect to the Paragraph 12 Employees. This included the payment of remittances to Local 183 on behalf of each of the Paragraph 12 Employees. At no time did Local 183 refuse to accept such remittances or otherwise take issue with the employment of any of these individuals and the payment of remittances pursuant to the Collective Agreement.

11. In or around Wednesday October 5, 2010, Frank McLaughlin, Business Representative of the Barrie Office of Local 183, contacted a representative of the Responding Party to inquire about the status of dues remittances for the Paragraph 12 Employees.

12. The June, July and/or August 2010 remittances for three of the Paragraph 12 Employees were made by the Responding Party in January of 2011, though remittances for September 2010, October 2010, and all months thereafter were made on a timely basis for all of the Paragraph 12

> Employees. In addition, any other Paragraph 12 Employee who worked before September of 2010 had remittances made on their behalf in a timely manner.
>
> 13. In its decision dated November 17, 2010, the Board determined that it would deal with the issue of the inclusion of the Paragraph 12 employees as challenged by the Responding Party first.

## Position of the Parties

### The Employer

3. It is the position of the responding party employer, Brennan Paving & Construction Ltd. ("Brennan Paving"), that this group of eleven (11) construction labourers remained covered by the terms of a subsisting collective agreement and worked pursuant to the terms of a "cross-over" clause therein, made with a constituent local (i.e. LIUNA, Local 183) of the applicant in this matter. The responding party acknowledges it is bound by the terms of the TARBA agreement. In this regard, article 8 of the TARBA agreement states the following:

> ARTICLE 8 - STATUTORY HOLIDAYS, VACATION PAY AND STATUTORY HOLIDAY PAY, HOURS OF WORK, WAGE RATES, ETC.
>
> 8.01 Attached hereto as Schedules "A", "B" and "C" to this Agreement are Schedules of Statutory Holidays, Vacation Pay and Statutory Holiday Pay, Hours of Work, Wage Rates, etc., which are hereby made a part of this Agreement.
>
> 8.02 It is understood and agreed that **when any employee works in a Board Area (including any Board Area otherwise not referred to in this Agreement or in any of the Schedules or Appendices attached hereto) in which he does not regularly work, all terms and conditions set out in this Collective Agreement (including all Schedules hereto) will be maintained and the employee will continue to receive his wage rate, hours of work, and other benefits as provided for in this Collective Agreement, that are applicable in the Board Area in which he regularly works,** unless the employee is working in a Board Area where such terms and conditions are specifically governed by a Schedule or Appendices forming part of this Collective Agreement, and where such Schedule or Appendices provides for more beneficial terms and conditions for the employee, in which case, the more beneficial terms and conditions shall apply.
>
> [emphasis added]

4. The responding party argues that as this group of eleven (11) employees are already covered by set terms and conditions of employment that arise from the operation of a collective agreement when they work in a Board Area, not otherwise referred to in the TARBA agreement (i.e. Board Area 28), this group of employees can only be in one bargaining unit at one point in time. In the application for certification, Brennan Paving asserts the group of eleven (11) employees are in the TARBA bargaining unit and, therefore, they cannot also be in the proposed LIUNA OPDC bargaining unit. Further, as it is asserted that the eleven (11) employees remain in

the TARBA bargaining unit the certification application, as it pertains to these individuals, would have to be a displacement application which would be untimely in this case due to the operation of section 7(4) of the Act.

5. In support of its position the responding party relies on the language of sections 7(1) and 7(4) of the Act which state:

> **7.** (1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may apply at any time to the Board for certification as bargaining agent of the employees in the unit.
>
> ...
>
> (4) Where a collective agreement is for a term of not more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last three months of its operation.

6. Applying the above statutory language of section 7(1) of the Act, the employer argues that employees in a proposed unit must not be "bound by a collective agreement". These eleven (11) individuals were receiving wages, hours of work, premium pay and benefit remittances in accordance with, and as required by, the TARBA agreement. In addition, Local 183 had received dues remittances from the employer with respect to these individuals. As a result, the employer asserts these eleven (11) employees are employees currently bound by a collective agreement such that section 7(1) of the Act operates to exclude the membership evidence of this group.

7. In legal argument, the employer referred to and relied upon the following authorities: *Re AB Construction Ltd. and L.I.U.N.A., Local 183,* 88 C.L.A.S. 280, (G.T. Surdykowski February 19, 2007); *Fernbrook Homes Ltd.,* [2006] O.L.R.D. No. 401 (February 3, 2006); *Fernbrook Homes Ltd.,* 2006 CanLII 6015 (ON L.R.B.); *C.D.C. Contracting,* [1982] OLRB Rep. November 1589; *Peri Formwork Systems Inc.,* [2007] O.L.R.D. No. 3990 (September 21, 2007).

8. *Re AB Construction Ltd., supra,* is an arbitration decision in which an employer failed to pay local members, working on behalf of the employer at a job site outside of the geographic scope described in the collective agreement, the rates and remittances stipulated by the agreement. Counsel for the responding party argued that the language of article 1.05 of the *AB Construction Ltd* collective agreement, which formed part of the Recognition Article of the agreement, was very similar to that found in article 8.02 of the TARBA agreement. Article 1.05 as set out in the *AB Construction Ltd.* decision, *supra,* is as follows:

> 1.05 It is understood and agreed that when an employee works, or a pieceworker is engaged, in a Board Area (including any Board Areas not otherwise referred to in the Collective Agreement or not otherwise referred in any of the Schedules or Appendices attached hereto) in which he does not regularly work and/or in which he is not regularly engaged, all terms and conditions set out in this Collective Agreement (including all schedules attached hereto) will be maintained and the employee/pieceworker will continue to receive his wage rate/piecework rates, hours of work, and other

> benefits as provided for in this Collective Agreement and that are applicable in the Board Area in which he regularly works, unless the employee/pieceworker is working in the Board Area where such terms and conditions are specifically governed by a schedule or appendices forming part of this Collective Agreement. Where such schedule or appendices provide for more beneficial terms and conditions for the employee/pieceworker, in which case the more beneficial terms and conditions shall apply.

9. Arbitrator Surdykowski, at paragraph 29 of the *AB Construction Ltd.*, decision, *supra*, stated the following:

> 29. … when an employee (which includes a pieceworker) performs work covered by the collective agreement outside of the geographic area described in Article 1.01 plus Board Area 18 for an employer bound by the agreement, Article 1.05 operates to require the employer to apply the collective agreement to that employee by paying and making remittances in accordance with the terms and conditions applicable under the agreement in the Board Area in which the employee regularly works.

10. The responding party argues that the interpretation given to the agreement in the *AB Construction Ltd.*, decision, *supra*, is analogous, given the similar language found in article 8.02 of the TARBA agreement, and the fact that Brennan Paving is also obligated to apply the TARBA agreement to the disputed eleven (11) employees. It then argues that given the eleven (11) employees are covered by a collective agreement, they must also remain in the TARBA bargaining unit and cannot be found to be working under or within another bargaining unit.

11. *Fernbrook Homes Ltd., supra, ("Fernbrook # 1"),* is a decision of the Board that dealt with a certification application brought by the Labourers for, in effect, the high-rise residential construction labourers of Fernbrook. By way of background, the Carpenters had also filed a displacement application seeking to displace the Labourers as bargaining agent for a bargaining unit that was described in the Residential Low Rise Bureau agreement, as follows:

> all construction employees of Fernbrook Homes Ltd. engaged in the on-site construction of all types of low-rise housing only, and their natural amenities, while working in the County of Simcoe and the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except employees employed as non-working foremen, watchmen and engineering staff'.

12. Fernbrook was bound to the Residential Low Rise Bureau agreement. Prior to the Carpenters bringing its displacement application, the Toronto Residential Construction Labour Bureau ("the Bureau") had become accredited to represent employers for whose employees the Labourers had bargaining rights. The Bureau agreement contained the following relevant provisions:

> ARTICLE 1- RECOGNITION
>
> 1.01(a) Each of the Employers recognizes the Union as the collective bargaining agent for all of its own construction employees engaged in the on-site construction of all types of low-rise housing and their natural amenities up to the date of closing or date of occupancy, whichever occurs first, of said housing or part thereof while working in the County of Simcoe and in O.L.R.B. Geographic Area No. 8, namely the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of N4ilton within the geographic Townships of Esquesing and Trafalgar and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and such other geographic areas to which this agreement may apply to pursuant to Schedule A Article 8 and/or any other appendices save and except employees employed as non-working foremen, watchmen and engineering staff.
>
> 1.02 Each of the Employers agree that when engaged in the on-site construction of apartment of buildings, they shall abide by the terms and conditions of the Collective Agreement between the Metropolitan Toronto Apartment Builders Association and the Universal Workers Union, L.I.U.N.A. Local 183, then in effect. The term "apartment building", when used in this Article, shall have the same meaning as in the Collective Agreement between the Metropolitan Toronto Apartment Builders Association and the Universal Workers Union, L.I.U.N.A. Local 183.

13. Prior to the Board's decision granting the displacement, the Labourers filed an application for certification seeking to represent a group of employees in Board Area 8, namely, all other employees in the non-ICI sectors of the construction industry other than employees performing the work described in the Bureau Agreement. (i.e. in effect, the high-rise residential employees of Fernbrook). The Labourers in the "high-rise" certification application had members working for Fernbrook on a high-rise residential building on the application filing date. The Labourers asserted that the article 1.02, the cross-over clause of the Bureau Agreement, did not operate so as to extend the scope of the Bureau Agreement to the high-rise sector. The Carpenters and Fernbrook asserted that because of the operation of the cross-over clause, the employees in respect of whom the Labourers had filed membership evidence remain covered by the Bureau Agreement.

14. At paragraph 35 of the *Fernbrook #1,* decision, *supra*, the Board made the following comments:

> In numerous other cases, the Board has confirmed that the "plugging in" to other collective agreements referred to in the above passage is not a matter of extending bargaining rights, but rather of incorporating the terms and conditions of other collective agreements when certain work is performed. Cross-over clauses do not create bargaining rights. They simply define terms and conditions of employment in the event that the employees in the bargaining unit covered by the collective agreement perform work outside the scope of the work for which terms and conditions of employment are prescribed in the collective agreement, and within the scope of other collective agreements to which the UWU is a party: (see *C.D.C. Contracting,* [1982] OLRB Rep. Nov. 1589, *Elirpa Construction and Materials Limited,* [1994] OLRB Rep. July 838; *The Residential Low Rise*

> *Forming Contractors Association of Metropolitan Toronto and Vicinity*, [1995] OLRB Rep. Dec. 1471).

15. The Board in *Fernbrook #1* went on to conclude that the membership evidence filed by the Labourers was in respect of persons covered by a subsisting collective agreement, namely the Bureau Agreement, and concluded the employees who were working on high-rise on the date of application were not employees employed in the bargaining unit for which the Labourers sought bargaining rights. Key to this conclusion was the Board's finding, at paragraph 37 of the decision, as follows:

> They were not working "beyond the scope" of the Bureau Collective Agreement, nor was the observance of the terms and conditions of the MTABA Collective Agreement gratuitous. They were covered by that collective agreement in circumstances, which are precisely those contemplated by Article 1.02. That is, they were paid the rates of pay that Fernbrook was obliged to pay them under Article 1.02 of the Bureau Collective Agreement, which imports the terms and conditions of the MTABA Agreement. That is, even though the Bureau Collective Agreement deals generally with the low-rise portion of the residential sector, when employees are working on high-rise residential projects they are still in the bargaining unit covered by the Bureau Collective Agreement, but are to be paid the terms and conditions of the MTABA Collective Agreement.

16. The Labourers sought reconsideration of the *Fernbrook #1,* decision, *supra.* The Board declined to reconsider its decision and, again, confirmed that the employees who were the subject of the "high-rise" application for certification were in the bargaining unit defined in article 1.01(a) of the Bureau Agreement and were performing work as contemplated in article 1.02 of the Bureau Agreement. The Board, at paragraphs 10 – 12 of the reconsideration decision stated the following:

> 10. The argument of the UWU previously and in this application conflates the concept of bargaining rights with work performed by employees in the bargaining unit. The Board has never equated work with bargaining rights. The union and the accredited bargaining agent's authority to bargain is defined by the bargaining rights in the accreditation order, absent some other authority flowing from the employer to the accredited bargaining agent. The parties were free to negotiate terms and conditions of employment for employees dealing with whatever work they were doing from time to time. That is all a cross-over clause does. It does not represent bargaining "beyond the scope of the accreditation order" because it does not purport to create bargaining rights beyond those that already exist.
>
> 11. It is, perhaps, conceivable that Fernbrook might employ persons who are not in the bargaining unit in the collective agreement, but who do perform work in the high-rise residential area. However, the UWU has pleaded no facts which suggest any such conclusion and do not (quite properly) seek to add new facts in this application for reconsideration.
>
> 12. Although I conclude that the reasoning set out in the February 3, 2006 decision is correct, I acknowledge that if this matter were before the Board for the first time, the arguments made by the UWU might be persuasive. However, this was first argued, apparently 25 years ago, in *C.D.C.*

> *Contracting Ltd.*, [1982] OLRB Rep. Nov. 1589. Even if I had some doubt about the conclusion, which I do not, I would be very reluctant to come to any other conclusion, particularly at the urging of the UWU. It is the UWU that has argued for almost 25 years that a cross-over clause is valid and enforceable, whether or not there is an outstanding accreditation order. Much of the collective bargaining in the Greater Toronto area and beyond is predicated on the validity and enforcement of such provisions, and the consistency of the Board's treatment of such cross-over clauses has contributed considerably to the stability of the construction industry over that time. To come to a different conclusion about the UWU's collective agreement, at its request, would have a seriously disrupting effect on the industry and is not something to be contemplated lightly.

17. As was the result in the *Fernbrook #1*, decision, *supra,* Brennan Paving argues, by analogy, that the eleven (11) Local 183 members who were working in Board Area #28 on the application filing date fall within the bargaining unit defined in article 2.01 of the TARBA agreement and were performing work as contemplated in article 8.02 of the TARBA agreement. As such, these eleven (11) labourers should be found not to be employees employed in the non-ICI Board Area #28 bargaining unit for which LIUNA OPDC seeks bargaining rights.

18. The employer also referred the Board to the decision of *C.D.C. Contracting, supra,* in which the Board found that an employer bound by a concrete and drain agreement, due to the cross-over provisions of that agreement, was required to make all of the remittances stipulated in a sewer and watermain agreement. The concrete and drain agreement contained a cross-over provision which stated the following:

> 10.04 If the Employer performs work covered by the Union's other collective agreements, as set out below, the work shall be performed under this Agreement according to the terms and conditions of the Union's applicable agreement.
>
> a) The Roads Agreement "being …
>
> b) The Sewer and Watermain Agreement being a collective agreement between the Metropolitan Toronto Sewer & Waterman Contractors' Association and A Council of Trade Unions acting as the representative and agent of Teamsters Local 230 and the Union.

19. In particular, the responding party referred the Board to paragraph 8 of the *C.D.C. Contracting,* decision, *supra,* as follows:

> 8. We hereby confirm our oral ruling given at the hearing that article 10.04 of the Concrete and Drain Agreement obligates the employer to perform sewer and watermain work under the Concrete and Drain Agreement according to the terms and conditions set out in the Sewer and Watermain Agreement. Article 10.04 is framed to cover all sewer and watermain work performed by the employer. It brings that work within the scope of the concrete and drain agreement but incorporates by reference the terms and conditions contained in the Sewer and Watermain Agreement. The employer cannot escape the effect of article 10.04 by maintaining a separate group of employees to perform sewer and watermain work. If the employer

> performs sewer and watermain work, as did the respondent in this case, that work is performed under the Concrete and Drain Agreement and the terms and conditions of the Sewer and Watermain Agreement apply.

20. The responding party asserts *C.D.C. Contracting, supra,* is consistent with the reasoning in *Fernbrook #1, supra.* It asserts the work being performed in Board Area #28, in the present application, is work that falls within the scope of the TARBA Agreement, just like the Board in *Fernbrook #1* found the high-rise residential work to be work within the scope of the Bureau Agreement. Whether the cross-over clause captures work from different sectors, like in Fernbrook where high-rise residential work was captured within the low-rise Bureau Agreement, or the particular cross-over language captures the same work when it crosses over into another Board Area, Brennan Paving submits the Board's jurisprudence points to the particular work as being performed pursuant to the underlying collective agreement.

21. In *Peri Formwork Systems Inc, supra,* the employer was bound to the Carpenters for a unit of employees defined in a collective agreement as, "all employees employed in its shop located at 45 Nixon Road in Bolton". The Canadian Construction Workers' Union ("CCWU") brought a displacement application and the Board's decision dealt with the status of approximately 20 "scaffolders" who spent most of their working time in the field performing construction work and who on occasion also worked in the shop. These disputed persons were employed under the Carpenters' Provincial I.C.I. Agreement and the evidence was such that when performing shop work these twenty (20) employees were treated and paid in accordance with the terms of the Provincial I.C.I. Agreement.

22. The responding party referred the Board to paragraphs 5 to 7 of the *Peri Formwork* decision, *supra,* as follows:

> 5. I find that the scaffolders are not employees in the bargaining unit. It is evident that they are employees in the bargaining unit under the Carpenters Provincial Collective Agreement. The fact that the work they do may not be covered by the Provincial Collective Agreement is irrelevant. Whether a grievance claiming the right to perform such work would succeed, or whether the Carpenters could win a jurisdictional dispute over that work does not matter. The employees were hired under the Provincial Collective Agreement; the terms and conditions of employment under that agreement govern their employment. When, in the context of that bargaining relationship, an employee is directed to do certain work, and the employee does that work, the nature of the work does not take him or her out of the bargaining unit. If that were the case, an employee could be assigned to do work outside of the scope of the bargaining unit, discharged without cause, and no grievance could be filed because the collective agreement did not apply to him or her on that day. Such a result is absurd. For a similar conclusion see *Electrical Power Systems Contractors Association,* [1990] OLRB Rep. Oct. 1031.
>
> 6. The fact that they perform the same work as employees in the bargaining unit is irrelevant to this application. **The proper voting constituency in any displacement application is the bargaining unit of employees in the bargaining unit represented by the incumbent union. The Board will not permit an applicant union to enlarge the bargaining unit in a displacement application. The employees in a bargaining unit are the**

> **ones who are entitled to determine which bargaining agent, if any, is entitled to represent them. That choice should not be dictated or influenced by persons who are not in the bargaining unit.** As the Board said in *Ellis-Don Construction Limited,* [2004] OLRB Rep. July/Aug. 2004 710:
>
> [emphasis added]

In my view, it is necessary to determine whether the persons the applicant dispatched to work for the responding party were employed in the bargaining unit represented by the intervenor on the date of application. Simply examining the work they performed on that day is not determinative. As the Board noted at paragraph 49 in the July 18, 1996 decision in *Ellis-Don Limited,* supra: "Because the Labourers' or any other trade union performs work that is also performed by another trade union as part of its recognized work function it does not extend bargaining rights for this other trade or craft." The corollary of that principle is also true, in my opinion. Simply because members of one trade union, say the Labourers, perform work that is also performed by members of another trade union, say the Carpenters, does not mean that persons in the Labourers' bargaining unit are no longer in that unit but come within the Carpenters' bargaining unit simply because they are performing work that is done by employees in the Carpenters' bargaining unit, particularly outside of the ICI sector. The approach taken by the Board in *Construction Gasperino Di forio Inc.,* supra, at paragraphs 59 and 60 is, in my opinion, apt:

> 59. In essence, any given individual employed by a responding party employer may only be in one bargaining unit at the time that an application for certification was made. On April 27, 1995, the certification application date, the employer had employees working for it in two distinct bargaining units - the Carpenters unit, which was governed by the Carpenters collective agreement, and the Labourers unit, which was governed by the terms and conditions of the National Capital Road Builders agreement. Any employee in the Labourers unit on that day cannot also have been in the Carpenters unit on that same day.
>
> 60. The agreed facts identify five individuals, members of the Labourers, as having been hired by the employer pursuant to the terms of the National Capital Road Builders agreement. It is also agreed that these individuals were employed under the "formsetting and formbuilder" classification of the above-noted agreement on the certification application date. In the circumstances, the result is patently obvious - on April 27, 1995, these five people were in the Labourers bargaining unit, and therefore by definition could not also be in the Carpenters unit which is subject to displacement in this proceeding - irrespective of what kind of work they were doing on that date, and irrespective of whether the Labourers' collective agreement itself was in an "open period". [emphasis added]

> 7. The applicant sought to distinguish that case on the basis that the persons who were dispatched to the job in the Ellis-Don case by the applicant Labourers were represented by a different trade union, the Carpenters. That is a distinction without a difference. If employees are in a different bargaining unit from the one that is the subject to a displacement application, they are not able to vote in a representation vote with respect to the bargaining agent in the bargaining unit of which they are not a member.

The end result in *Peri Formwork Systems Inc., supra,* was the Board found that the 20 scaffolders were not entitled to cast a ballot in the representation vote held in the shop displacement application.

23. Based on the above passages from the *Peri Formwork Systems Inc.,* decision, supra, the responding party argues that any given individual may only be in one bargaining unit at the time that an application for certification is made. As such, if employees are found to be in a bargaining unit, they should not be able to count to determine the bargaining agent in a different bargaining unit, similar to the result in the Peri Formwork, decision, supra.

## LIUNA OPDC'S Position

24. LIUNA OPDC asserts that, at present, there is no trade union that has bargaining rights for construction labourers in Board Area 28, as it relates to the employees of Brennan Paving. It asserts that if one carefully reviews the recognition clause of the TARBA agreement, it is clear that the geographic scope of the TARBA bargaining unit only covers Board Areas 8, 9, 10, 11, & 18. Further, article 8 of the TARBA agreement does not require Brennan Paving to assign work outside of the specific Board Areas to which the agreement applies, but rather, only provides for the continued application of the TARBA Agreement and its terms and conditions to Local 183 members when such members are assigned work outside of the specific Board areas covered by the TARBA Agreement.

25. LIUNA OPDC cited and relied on the following cases: *Hotel Dieu Hospital,* [2000] OLRB Rep. March/April 218; *Fernbrook Homes Limited,* 2006 CanLII 3092 (ON L.R.B.); *Lafarge Canada Inc.,* [1999] O.L.R.D. No. 1793; *Wasaga Trim Supply (2006) Inc.,* [2009] OLRB Rep. Nov/Dec 1012, 2009 CanLII 64163 (ON L.R.B.); *Comstock Canada Ltd.,* [2006] OLRB Rep. July/August 501; *Main Rehabilitation Co.,* [2001] O.L.R.D. No. 3496; *Beneff Concrete Ltd.,* 2010 CanLII 43974 (ON L.R.B.); *The Cairn Group Inc. and Cairn Construction Ltd.,* 2003 CanLII 33650 (ON L.R.B.); *Fernbrook Homes Limited,* 2006 CanLII 6015 (ON L.R.B.); *Ontario Power Generation Inc.,* [2005] OLRB Rep. July/August 675; *C.D.C. Contracting,* [1982] OLRB Rep. November 1589 and *Fernbrook Homes Ltd.,* 2006 CanLII 30576 (ON L.R.B.).

26. The *Hotel Dieu Hospital* decision, *supra,* is cited for the proposition that the Board has typically recognized that the scope of a union's bargaining rights are set out in the recognition clause of the relevant collective agreement. At paragraph 13 of *Hotel Dieu Hospital* decision, *supra,* the Board stated the following:

> 13. As I advised the parties at the close of the oral hearing, I concluded that the collective agreement between CUPE and Hotel Dieu Hospital contains no limits on the geographical scope of the bargaining rights. **As I already set out, the recognition clause on its face, has no limits. Typically, the scope of the bargaining rights are set out in the recognition clause, and a**

> **decision-maker should be cautious about looking elsewhere in the agreement for aides to the interpretation of the recognition clause, particularly where it is alleged that other provisions in the collective agreement LIMIT the scope of bargaining rights. The scope of bargaining rights is of fundamental importance to negotiating parties, particularly trade unions.** As the Board said in Cuddy Food Products Ltd., [1988] OLRD Rep. Dec. 1211, "... language which does not clearly alter the scope of bargaining rights should not readily be supposed to do so ...". Decision-makers should start with the assumption that the parties would clearly set out the scope of bargaining rights, and set them out in the recognition clause. It would take the most compelling evidence to convince me to depart from those principles. The evidence falls well short in this case.
>
> [emphasis added]

27. In addition, the scope of a bargaining unit is not determined by the mere application of the terms and conditions of an agreement. The fact that an employer may have agreed to apply the terms of the collective agreement does not necessarily mean the union has bargaining rights as it concerns the affected employees (see *Fernbrook #1, supra,* paragraph 36).

28. LIUNA OPDC argues that the Board's jurisprudence establishes that "cross-over" clauses do not create or extend bargaining rights. Even in the key case relied on by the employer, *Fernbrook #1, supra,* the Board, at paragraph 35, recognized this as follows:

> In numerous other cases, **the Board has confirmed that the "plugging in" to other collective agreements referred to in the above passage is not a matter of extending bargaining rights, but rather of incorporating the terms and conditions of other collective agreements when certain work is performed. Cross-over clauses do not create bargaining rights.** They simply define terms and conditions of employment in the event that the employees in the bargaining unit covered by the collective agreement perform work outside the scope of the work for which terms and conditions of employment are prescribed in the collective agreement, and within the scope of other collective agreements to which the UWU is a party: (see *C.D.C. Contracting*, [1982] OLRB Rep. Nov. 1589, *Elirpa Construction and Materials Limited*, [1994] OLRB Rep. July 838; *The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity*, [1995] OLRB Rep. Dec. 1471).
>
> [emphasis added]

29. In *Lafarge Canada Inc.*, decision, *supra,* the Board commented as follows at paragraph 24:

> 24. **The cross-over clauses of the collective agreements do not confer bargaining rights upon the union. They prescribe terms and conditions of employment, but not bargaining rights. The absence of bargaining rights in the ICI sector can co-exist with an undertaking by the company to abide by the terms of the ICI agreements referred to in Articles 3.07 and 11 of the collective agreements.** Hence, in our view, there is no operating inconsistency between the provisions of the collective agreements and the Settlement Agreement; there is therefore no conflict between the collective agreements and the Settlement Agreement. Had there been

> express exclusionary language which rendered Articles 3.07 and 11 of the collective agreements ineffective, then that intention would be clear. But there is no such language. On the contrary, the express language of paragraph 10 of the Settlement Agreement is that the company agreed to be bound by "all" of the union's applicable collective agreements in the non-ICI sectors. No limitation is placed upon the full applicability of those agreements.

[emphasis added]

30. Likewise, in *Wasaga Trim Supply, (2006) Ltd., supra,* the Board found Wasaga Trim was required, by virtue of section 1.04 of the Low Rise Agreement, to abide by the terms and conditions of the High Rise Agreement when its employees in the Low Rise Agreement bargaining unit performed work on the highrise residential project in Board Area 8. In this decision, the Board found compelling the analysis in the *Lafarge Canada Inc.* decision, *supra.* At paragraph 21 of the decision, the Board made the following comments:

> 21. The cross-over clause in the Low Rise Agreement does not extend the scope of the bargaining unit in the Low Rise Agreement nor does it result in the responding party being bound by the High Rise Agreement. Rather, it requires the responding party, when its bargaining unit employees are doing work covered by the High Rise Agreement, to apply the terms and conditions of that collective agreement by reason of section 1.04 of the Low Rise Agreement. In other words, section 1.04 of the Low Rise Agreement incorporates by reference the terms and conditions of the High Rise Agreement that apply when the employees in the bargaining unit described in the Low Rise Agreement perform work to which the High Rise Agreement applies. See for example *Frank Plastina Investments Ltd.*, [1986] OLRB Rep. June 720. The Board in *Triumph Trim Ltd.*, decision dated August 3, 2004, unreported, Board File No. 0439-04-R, Q.L. cite [2004] OLRD No. 1836 succinctly set out the effect of a cross-over clause at paragraph 2:
>
>> **A "cross-over" clause of the sort in this collective agreement does not create bargaining rights, it simply applies the terms and conditions of certain other collective agreements if the employer assigns employees in the bargaining unit to perform work covered by those other collective agreements.**

[emphasis added]

31. LIUNA OPDC also cited the Board's decision in *Comstock Canada Ltd., supra* and referred the Board to the following paragraph:

> 28. We accept that the Brighton Beach Agreement does contemplate other employers working at the intervenor's project applying the terms and conditions of the Brighton Beach Agreement and perhaps becoming bound by that agreement. **But as the Board noted in *Ecodyne Limited*, [1979] OLRB Rep. July 629 an employer applying all of the terms of a collective agreement to the work performed by its employees does not mean that the union party to that collective agreement has obtained**

**bargaining rights for those employees.** The Board in *Ecodyne Limited* wrote at page 636:

> The evidence establishes that when contractors bound by the local Thunder Bay area collective agreements worked on Hydro projects, they applied the terms of the agreements to their employees notwithstanding the fact that these employees were not included within the scope clause of the agreements. The mere fact that the terms of a collective agreement are applied to certain work and to certain employees does not, however, mean that the union party to the collective agreement has actual bargaining rights for the employees involved. See *Bechtel Canada Limited,* Board File No. 0745-75-R, an unreported decision dated September 3, 1975. In this regard it might be noted that it is not at all uncommon in the construction industry for employers not formally bound to a collective agreement to nevertheless employ union members under the same terms and conditions as set forth in a collective agreement without any intention of thereby conferring bargaining rights on the union. Similarly, trade unions in such circumstances sometimes refrain from applying to the Board to be certified as the legal bargaining agent of the employees involved notwithstanding the fact the employees are union members.

The Board in *Twin Electric, supra* also commented at page 395 that the circumstances of that case were quite unlike the situation the Board dealt with in the *Bechtel Canada Limited* decision, cited in *Ecodyne*: "This case is a far cry from one like *Bechtel Canada* (unreported), Board File No. 0745-75-R, released September 3, 1975, in which the company appears to have had nothing whatever to do with the employers' association other than to apply the terms of the collective agreement which it negotiated for the area." See also *R N Mechanical Ltd., supra* at page 124 where the Board wrote:

> Furthermore, while we find that R N complied with the collective agreements, as they existed from time to time, for a number of years, we agree that alone such conduct does not constitute voluntary recognition by R N. It is not uncommon in the construction industry for employers to pay union rates and apply terms of collective agreements without entering into a collective agreement. Such conduct does not by itself confer bargaining rights on the trade union. (See *Steel-Tech* (November 17, 1999, Board File 1878-99-R, at para. 10; *Ecodyne*, [1979] OLRB Rep. July 629 at 636).

[emphasis added]

32. The applicant also points out that the status of employees working pursuant to a cross-over clause has also been the subject of comment by the Board in the context of termination application scenarios. In such circumstrances, regardless of whether it is a certification or termination application, LIUNA OPDC submits there should be no difference in how the Board should approach the status of a disputed individual. In *Main Rehabilitation Co., supra,* the Board had to decide if certain employees of Main were working in the bargaining unit on the termination date. Local 183 had bargaining rights with Main. Pursuant to s. 137 (4) of the Act, Main was bound to two (2) collective agreements, the Heavy Agreement and the Greater Toronto Sewer and Watermain Agreement. The geographic area covered by the respective agreements involved Board Area 8, however, such agreements had travel allowance provisions that stated that

if an employee was sent out of town by the employers, the employers agreed to maintain the rate of wages, hours of work and fringe benefits provided for in the respective agreement. On the termination date there were eleven (11) employees of Main working in Board Area 3. Main had applied the terms and conditions of the respective collective agreements to these employees.

33. At paragraphs 11 and 12 of the *Main Rehabilitation Co.,* decision, *supra,* the Board cited the following propositions of law applicable to the status issue: (1) the mere observance of the terms and conditions of a collective agreement does not, in and of itself, create a collective agreement between the parties or bind them to one and; (2) the accreditation orders in themselves do not create bargaining rights outside the geographic area and sector for which the accreditation order is made. In this decision, the Board went on to find the eleven (11) employees working in Board Area 3 were outside the bargaining unit for which the union held bargaining rights.

34. By analogy to the result in the *Main Rehabilitation Co.,* decision, *supra,* LIUNA OPDC argues that if this had been a termination application of the TARBA bargaining unit, the eleven (11) employees working for Brennan Paving in Board Area 28, would have been found by the Board to have been working outside of the TARBA bargaining unit. As such, if the group of eleven (11) working in Board Area 28 are outside of the TARBA unit for purposes of terminating bargaining rights, than logically, it follows that the eleven (11) employees can fall within a construction labourers bargaining unit that is trying to establish non-I.C.I. bargaining rights in Board Area 28.

35. Another termination case cited by the applicant is *Beneff Concrete Ltd., supra.* In this case the applicant, and the other employees of the employer who were engaged in concrete forming and finishing work on the termination application date, were working in Norfolk County which was a location outside of the geographic scope of the bargaining unit. The employer believed it was obligated to apply the terms and conditions of the collective agreement to the employees when they worked in Norfolk County. At paragraphs 17, 18 and 20 the Board commented as follows:

> 17. What is clear from the intervenor's submissions is that the voluntary recognition agreement and memorandum of agreement establish the responding party has bargaining rights for the employees in Board Area 3 and that there is nothing in writing between the responding party and the intervenor that provides the responding party holds bargaining rights for employees of the intervenor in Board Area 4 and in particular, in Norfolk County.
>
> 18. There is no doubt the terms of a collective agreement can be applied to employees and the work done by an employer without a trade union holding bargaining rights for those employees. The Board in *Ecodyne Limited,* [1979] OLRB Rep. July 629 noted at page 636:
>
> > The mere fact that the terms of a collective agreement are applied to certain work and to certain employees does not, however, mean that the union party to the collective agreement has actual bargaining rights for the employees involved.
>
> See also *Comstock Canada Ltd.*, [2006] OLRB Rep. July/August 501 at 507 and *Canform Structures Limited*, [2007] OLRB Rep. Jan./Feb. 28 at 37. In other words, applying the terms and conditions of a collective agreement to

> employees and work that is beyond the scope of the bargaining unit described in that collective agreement does not enlarge the bargaining unit or extend a trade union's bargaining rights.
>
> ...
>
> 20. On the basis of the parties' agreement as set out in the Board's June 1st decision and in the absence of any document establishing the responding party's bargaining rights extended beyond the scope of the bargaining unit as set out in the Board's June 1st decision and the London and District Concrete Forming Contractors Association collective agreement, I must conclude the geographic scope of the bargaining unit of employees of the intervenor for which the responding party holds bargaining rights does not include Norfolk County. For the reasons expressed earlier, the fact that the responding party and intervenor acted as if Norfolk County came within the scope of the bargaining unit for which the responding party held bargaining rights does not amend the scope of the bargaining unit to which the intervenor and responding party agreed when they entered into their collective agreement and to which the parties had agreed in this proceeding.

36. LIUNA OPDC also referred the Board to the decision in *Cairn Group Inc., supra.* This case involved an ICI application for certification by the Labourers. On the application filing date there were three (3) employees being paid in accordance with the Carpenters ICI collective agreement. The Labourers argued that these individuals were in the Carpenter's bargaining unit at the time of the application and should be excluded because an individual can only be in one bargaining unit at a single point in time. The Board found that while these individuals were members of the Carpenter's Union, and were being paid under the Carpenter's agreement, this did not change the fact that the work they performed on the date of the application was Labourer's work. At paragraphs 15 and 16 of the decision the Board commented as follows:

> 15. In terms of the established principles governing construction industry applications for certification the three challenged individuals have the right to cast their ballots and have those ballots counted. That is because they were performing labourer's work on the date of application and were therefore employed as construction labourers on the date of application. It is not material to that determination whether or not they are working pursuant to terms and conditions of another collective agreement or if they are members of another trade union. The ICI provincial designation does not make it possible for Carpenters to represent construction labourers in the ICI sector of the construction industry.
>
> 16. As to the applicant's argument that individuals can only be in one bargaining unit at a single point in time, that proposition remains intact and is not contentious in this case. On the date of application these individuals were only working in one bargaining unit by virtue of the work they were performing. They were doing labourer's work. They are therefore in that bargaining unit for the purpose of this application for certification.

37. LIUNA OPDC argues the decision in *The Cairn Group Inc., supra* is analogous to the present application. Even though the *Cairn Group* decision did not deal with a cross-over clause it involved individuals working outside the scope of a collective agreement but still being paid in accordance with that agreement. By analogy, it is argued that the group of eleven (11) in the

present application were working outside the scope of the TARBA agreement even though they were still being paid in accordance with that agreement.

38. As it concerns the Board's decision in *Fenbrook #1*, and its reconsideration decision, LIUNA OPDC argues that these decisions are distinguishable from the case at hand. First, it asserts that the mandatory language of article 1.02 in the Bureau Agreement, which required employers bound to that Agreement apply the MATBA Agreement when engaged in high-rise apartment buildings, and the fact that such language was found in the Recognition Article of the Bureau Agreement was, in effect, interpreted by the Board in *Fernbrook #1* as extending recognition of the bargaining rights to residential high rise contruction. By comparison, the TARBA agreement does not mandate employers bound to TARBA to use Local 183 members when performing work outside the geographic scope of the TARBA Agreement. Likewise, the cross-over language of article 8.02 of the TARBA Agreement is not contained in the Recognition section of TARBA Agreement, but rather, falls within an article that has the heading " Statutory Holidays, Vacation Pay and Statutory Holiday Pay, Hours of Work, Wage Rates, Etc".

39. LIUNA OPDC also asserts that the Board in the *Fernbrook #1* decision, viewed the situation involving Fernbrook as similar to what had occurred in the *Ontario Power Generation Inc.* , [2005] OLRB Rep. July/August. 675 decision. Paragraph 42 of the *Fernbrook #1* decision, *supra* commented as follows:

> 42. Accordingly, the employees who are the subject of this application were, as at November 15, 2005, working under the provisions of the Bureau Collective Agreement. The UWU may not expand the scope of its collective agreement by applying for certification relying only on employees for whom it already has bargaining rights: see *Ontario Power Generation Inc.*, [2005] OLRB Rep. July/Aug. 675.

40. In the decision of *Ontario Power Generation Inc., supra*, LIUNA, OPCD sought to displace themselves and their parent international in order to expand the scope of the bargaining unit for which they held bargaining rights under the EPSCA collective agreement. At paragraph 32 of the decision the Board commented as follows:

> 32. The applicants through these applications seek to enlarge the bargaining units for which they currently hold bargaining rights based on only their membership support in their existing bargaining units and when there are no employees working in the segment of the bargaining units they claim are appropriate that falls outside their existing bargaining units. For the reasons set out above, we are satisfied that the single bargaining units sought by the applicants are not appropriate for collective bargaining. Rather, there are two units in each application that are appropriate for collective bargaining. One is the current bargaining unit for which each of the applicants holds bargaining rights and are the only bargaining units in which employees were working on the application date. The other is the bargaining unit mandated by section 158 of the Act, that is, the province wide ICI sector together with all other sectors in the geographic areas in which employees were working on the application date, excluding those persons who were working under the EPSCA collective agreement on the date the application was made. Since there were no employees at work on the application date in those second bargaining units, these applications, in so far as they relate to those second "ICI" units, must be dismissed.

41. LIUNA OPDC argues the facts in this case and the particular language of the TARBA Agreement, distinguishes it from the result in *Fernbrook #1, supra* and the *Ontario Power Generation* decisions, *supra.* LIUNA OPDC is not seeking to expand the scope of the TARBA Agreement by applying for certification relying only on employees for whom it already has bargaining rights. Brennan Paving was in no way obligated or mandated to use members of Local 183 when performing work in Board Area #28. The recognition provision of the TARBA Agreement is also clear that Local 183 has no bargaining rights for construction labourers in Board Area #28. The mere fact that Brennan Paving has agreed to apply the terms of the TARBA Agreement to these eleven (11) employees, if Brennan engages them to work in Board Area #28, does not mean Local 183 had already acquired the bargaining rights for Brennan Paving's labourers in Board Area #28.

42. As it concerns the Board's decision in *C.D.C. Contracting, supra,* which was relied on by the responding party and also referred to by the Board in its Fernbrook decisions, LIUNA OPDC argues that *C.D.C. Contracting,* supra, does not assist the Board in its determination of this matter. *C.D.C. Contracting, supra,* dealt only with a construction industry grievance and did not have to deal with status issues in the context of a certification application. *C.D.C. Contracting, supra,* is just another example that when an employer is obligated to perform certain work, as a result of a cross-over clause (i.e. sewer and watermain work), that work will be viewed by the Board as falling within the scope of the originating collective agreement. (i.e. the Concrete and Drain agreement). Once again, LIUNA OPDC argues that when Brennan Paving is performing construction labourer work in Board Area #28 it is not obligated to use Local 183 members pursuant to the TARBA Agreement. As such, the construction labourer work in Board Area #28 is not brought within the scope of the TARBA Agreement.

**Reply Argument of the Responding Party**

43. In reply, the responding party argues that whether an employer has a mandatory obligation to employ labourers, as a result of cross-over language, as compared to a discretionary obligation, is a distinction without a difference. The end result is the same, the employees end up having the terms of the originating collective agreement applying to them For the present application, the eleven (11) employees in dispute, on the date of the application, were covered by the TARBA Agreement and therefore, should be properly characterized as being in the TARBA bargaining unit. The simple determination for the Board should then be, if the employees are covered by a subsisting collective agreement, then the employees should not be included on the Schedule "A" List of Employees for purposes of the certification application.

**Legal Analysis and Decision**

44. In *The City of Hamilton, Regional Municipality of Hamilton-Wentworth*, [2002] OLRB Rep. Sept/Oct. 976, the Divisional Court at paragraph 17 of the decision stated the following:

> "It is true that the Board before proceeding to consider an application for certification must first answer two preliminary questions, one of which is: **Are the employees bound by a collective agreement? However, this is not a jurisdictional question. The Board is simply deciding whether on the facts before it as it finds them, there exists a collective agreement between a bargaining unit and the employer, the scope of which binds**

> **the new employees.** As such, the Board is not required to define the meaning of statutory rights, the existence of which is fundamental to the very jurisdiction of the Board, as was the case in *Re Great Atlantic and Pacific Company of Canada v. United Food & Commercial Workers International Union, Local 175 and 633* (1995), 24 O.R. (3d) 809 (Ont. Div. Ct.). To the extent that it finds the existence of an agreement and interprets the meaning of its scope clause, the Board is simply making findings of facts based on the evidence before it. This preliminary issue is well within the special expertise of the Board. Finding that a collective agreement has been entered into between an employer and a bargaining unit and interpreting the specialized language of that collective agreement and part of the day to day work of the Board. The functional and pragmatic approach requires that the Court show substantial deference to the Board's decisions on those preliminary questions."
>
> [emphasis added]

## Are the Paragraph 12 Employees Already Bound by a Collective Agreement?

45. In answering the question are the "Paragraph 12 Employees" bound by a collective agreement, the Board finds significant that based on the Agreed to Facts there would appear to be two classes of "Paragraph 12 Employees". One class relates to those Local 183 members who, at the request of the responding party, were either directly dispatched by Local 183 or indirectly dispatched through other Locals, (hereinafter collectively referred to as the "Paragraph 12 Dispatched Employees"). Paragraph 9 of the Agreed to Facts indicates these employees were sent by Local 183 or other LIUNA OPDC constituent Locals, at the behest of the responding party, and then at some point prior to the application filing date were assigned by the responding party to its Highway 26 job sites in Board Area No. 28. Having regard to the Agreed to Facts, the Board finds that these Paragraph 12 Dispatched Employees were assigned by the responding party to work in Board Area No. 28.

46. The other class of "Paragraph 12 Employees", is described by the parties in Paragraph 9 of the Agreed to Facts, as follows:

> "The Applicant asserts, and the Responding Party does not contest for the purposes of these agreed facts and the determination of this issue only, that some of the Paragraph 12 Employees were not dispatched nor cleared through Local 183 but were in fact hired by the Responding Party at the job site".

The Board will hereinafter refer to this class of Paragraph 12 Employees as the "Paragraph 12 Non-Dispatched Employees".

## Paragraph 12 Dispatched Employees

47. In answering the question are the Paragraph 12 Dispatched Employees bound by a collective agreement, the Board is in agreement with the position of the responding party and adopts the reasoning of the Board set out in its prior decisions of *Fernbrook #1* and its reconsideration decision. Applying the statutory language of section 7(1) of the Act, the Board finds that the "Paragraph 12 Dispatched Employees" were bound by the TARBA collective

agreement on the application filing date and, as such, the Paragraph 12 Dispatched Employees membership evidence is excluded.

48. The Board finds that when the Paragraph 12 Dispatched Employees were performing construction labourers work in Board Area 28, on the application date, they were not working "beyond the scope" of the TARBA agreement, nor was the observance of the terms and conditions of the TARBA agreement by this responding party merely gratuitous. These Paragraph 12 Dispatched Employees were covered by the TARBA agreement in circumstances which are precisely those contemplated in Article 8.02 of the TARBA agreement. That is, all terms and conditions set out in the TARBA agreement were maintained and the employees continued to receive their wage rates, hours of work and other benefits. Likewise, Local 183 continued to receive due remittances from Brennan Paving with respect to these individuals. In this regard, the Board finds that the language of Article 8.02 of the TARBA agreement is analogous to the cross-over language in the collective agreement interpreted in the *AB Construction Ltd.* decision, *supra*. The arbitrator in that decision, at paragraph 25 stated as follows:

> "that whatever or wherever that employment relationship was formed, once the employee (or pieceworker) 'works' (or is engaged) the collective agreement applies such that the employee (pieceworker) must be paid in accordance with the terms and conditions of the collective agreement. The applicable terms and conditions are those in effect for the Board Area in which the employee 'regularly' works (or pieceworker is engaged)."

Further, at paragraph 29 of the *AB Construction Ltd.*, decision, *supra,* Arbitrator Surdykowsi stated the following:

> "I am satisfied that when an employee (which includes a pieceworker) performs work covered by the collective agreement outside of the geographic area described in Article 1.01 plus Board Area 18 for an employer bound by the agreement, Article 1.05 operates to require the employer to apply the collective agreement to that employee by paying and making remittances in accordance with the terms and conditions applicable under the agreement in the Board Area in which the employee regularly works."

49. I am of the view that the language of article 8.02 of the TARBA agreement has the same effect as the analogous language found in article 1.05 of the collective agreement in the *AB Construction Ltd.*, decision, *supra.* The Board finds that the language of article 8.02 of the TARBA agreement, even though the language is not situated within the recognition provision of the TARBA agreement, has the effect and operates such that when these employees were assigned to perform work in a Board Area not otherwise referred to in the TARBA agreement they remained covered by the TARBA agreement even though the work was performed outside of the geographic area described in article 2.01 of the TARBA agreement.

50. The Board also agrees with the responding party's characterization that whether an employer has a mandatory obligation to employ employees in a Board Area outside of the geographic scope of the agreements, as a result of the language in the cross-over clause, as compared to a discretionary obligation, is a distinction without a difference. The end result is the same. If an employer exercises its discretion and chooses to have Local 183 members dispatched and assigned to work at projects outside the nominal geographic scope of the TARBA agreement,

even though it is not mandated by the terms of the agreement to do so, then there is no longer a discretion as to whether it applies the TARBA agreement to those employees. The terms of Article 8.02 of the TARBA agreement are clear and mandate the employer must apply the entire TARBA agreement to these employees. The fact that the language of Article 8.02 is not found in the Recognition section (i.e. Article 2) of the TARBA agreement is not viewed by the Board as determinative. The precise language of Article 8.02 is wide reaching in scope and application and goes beyond the "travel allowance/wage maintenance" type language found in *Main Rehabilitation Co.* decision, *supra.*

51. As stated by the Board, at paragraph 9 of the reconsideration decision in *Fernbrook#1*, when dealing with cross-over clauses it is important not to conflate the concept of bargaining rights with work performed by employees in the bargaining unit. The Board has never equated work with bargaining rights. The Board's jurisprudence also makes it clear that it is very important to review the precise language of the cross-over clause at issue, as the precise language of cross-over clause can operate, or have the effect of, expanding the application of a collective agreement beyond its scope without necessarily expanding the bargaining unit or expanding bargaining rights. In the present situation, the Board finds that the language of Article 8.02 does precisely this. Article 8.02 of the TARBA agreement has the effect of expanding the application of the TARBA agreement beyond its nominal geographic scope without expanding the TARBA bargaining unit or its bargaining rights. In this regard, the Board agrees with and adopts the comments made in the *Fernbrook # 1,* reconsideration decision, *supra,* at paragraph 12, and finds the reasoning applicable to the facts in this case:

> "It is the UWU that has argued for almost 25 years that a cross-over clause is valid and enforceable, whether or not there is an outstanding accreditation order. Much of the collective bargaining in the Greater Toronto area and beyond is predicated on the validity and enforcement of such provisions, and the consistency of the Board's treatment of such cross-over clauses has contributed considerably to the stability of the construction industry over that time. To come to a different conclusion about the UWU's collective agreement, at its request, would have a seriously disrupting effect on the industry and is not something to be contemplated lightly."

52. The Board does not find helpful the case of the *Cairn Group Inc., supra,* referred to by the applicant. This case did not deal with a cross-over clause, and, as such, it is distinguishable from the facts in the present non-ICI application for certification. Further, the Board in *Ellis-Don Construction Ltd.*, [2004] OLRB Rep. July/August 710, at paragraph 32 made the following comment concerning the *Cairn Group Inc.* decision, with which I agree and adopt:

> The Board in *Cairn Group Inc.* focused only on whether the three persons in dispute, who had been referred to work for the employer by the Carpenters' Union and were working pursuant to the Carpenters' ICI provincial agreement, were engaged in work done by construction labourers. The Board did not consider it significant that the work those three persons were doing was also work covered by the Carpenters' provincial collective agreement. In other words, the Board in that case did not address the possibility that individuals in two different bargaining units in the ICI sector might well perform the same work. I respectfully disagree with the Board's conclusion in that case that: "It is not material to that determination whether or not they are working pursuant to terms and conditions of another collective agreement or if they are members of another trade union." In my

> view, the fact that persons may be members of a particular union employed pursuant to that union's collective agreement with an employer covering the work those persons are doing for that employer is a material, if not determinative, factor when assessing which of two construction industry bargaining units those persons are in.

53. Likewise, the Board is of the view that the decision in *Beneff Concrete Ltd., supra,* is also distinguishable as it relates to the Paragraph 12 Dispatched Employees. *Beneff Concrete Ltd., supra,* was a termination application in which a number of employees were working in Norfolk County (Board Area 4) on the termination application date. The applicant filed the termination application because he no longer wished to be represented in collective bargaining when he performed work in Norfolk County (Board Area 4). The responding party trade union and intervenor employer, since entering into a voluntary recognition agreement and memorandum, acted as if they were bound by the London and District Concrete Forming Contractors Association collective agreement for work done by the employer in Norfolk County. However, the parties had agreed that the description of the bargaining unit only involved Board Area 3. Article 1.02 of the London and District Concrete Forming Contractors Association collective agreement provided that the employers agreed and acknowledged to abide by and apply the terms and conditions set out in the collective agreement in its entirety throughout the Province of Ontario. At paragraph 19 of the decision, the Board noted **"none of the parties made any comment about whether section 1.02 of the London and District Concrete Forming Contractors Association collective agreement had relevance to the scope of the responding party's bargaining rights or the description of the bargaining unit to which this application relates"**. The Board in that case relied on the parties' agreement to find the employees working in Norfolk County were not covered by the collective agreement. Given the above comments, the Board is unable to conclude that the *Beneff Concrete Ltd.* decision supports the proposition put forward by the applicant that in a termination scenario, the Paragraph 12 Dispatched Employees, in Board Area 28 would be found by the Board to have been working outside of the TARBA bargaining unit, and hence must be found to be part of the group of employees trying to establish non-ICI bargaining rights in Board Area 28.

54. The proper voting constituency in any termination application is the bargaining unit of employees in the bargaining unit represented by the incumbent union. The employees in a bargaining unit are the ones who are entitled to determine which bargaining agent, if any, is entitled to represent them. In the hypothetical termination situation put forward by the applicant in its legal argument, the Paragraph 12 Dispatched Employees remain covered by all the terms and conditions of the TARBA collective agreement when they are performing construction labourers' work in Board Area 28. If the Paragraph 12 Dispatched Employees were not paid the proper wage rates and benefits they would have the right to file a grievance under the TARBA agreement. If one of the Paragraph 12 Dispatched Employees was disciplined or discharged for events that occurred while performing work in Board Area 28 they would have the right to challenge the employer's disciplinary action pursuant to the TARBA agreement. If an individual employed by a responding party employer may only be in one bargaining unit at the time that an application for certification is made, then the above examples help illustrate that the Paragraph 12 Dispatched Employees were not working "beyond the scope" of the TARBA agreement but remained in the TARBA bargaining unit on September 28, 2010. The Board finds that the Paragraph 12 Dispatched Employees remained covered and bound by the TARBA collective agreement on September 28, 2010. Accordingly, the Paragraph 12 Dispatched Employees were on September 28, 2010 working under the terms of the TARBA collective agreement, and as

such, are found by the Board not to be employees employed in the bargaining unit for which LIUNA OPDC has sought bargaining rights.

**Paragraph 12 Non-Dispatched Employees**

55. As it concerns the Paragraph 12 Non-Dispatched Employees, the Board is of the view that these employees are similarly situated, for employee status purposes, to the other twenty-six individuals identified in the Agreed to Facts as individuals who were hired locally and not employed pursuant to the TARBA Agreement. While the responding party may have applied the terms and conditions of the TARBA Agreement to the Paragraph 12 Non-Dispatched Employees, it was not obligated to so. Paragraph 6 of the Agreed to Facts makes it clear that the cross-over language "provides for the continued application of the TARBA Agreement and its terms and conditions to Local 183 members when they are assigned to work outside of those Board Areas" to which it applies.

56. Having regard to the parties' Agreed to Facts, the Board finds that the Paragraph 12 Non-Dispatched Employees were not employees of the responding party prior to being hired to work in Board Area 28 by the responding party. They were not employees within the meaning of section 8.02 of the TARBA agreement as they became employed by the responding party for the first time when they were hired at its job sites in Board Area 28. They were not "assigned" to perform work in Board Area 28. Paragraph 9 of the Agreed to Facts stipulates that these employees were not dispatched nor cleared through Local 183 but were in fact hired by the responding party at the job site. In such circumstances, if an employer applies the terms and conditions of the TARBA Agreement to some newly hired individuals, when it is not obligated to do so, based on the principles established in the cases relied on by the applicant, such as *Comstock Canada, supra; Main Rehabilitation Co.; supra;* and *Ecodyne Limited,* [1979] OLRB Rep. July 629, those individuals are not employees in that bargaining unit.

57. The parties do not specifically identify which of the eleven (11) individuals fall within the "Paragraph 12 Non-Dispatched Employee" class, however, if a Paragraph 12 Employee was hired by Brennan Paving at one of the Board Area 28 job sites, and was not dispatched by Local 183 either directly or indirectly through other Locals of the Applicant, the Board finds such an employee is not bound by the TARBA Agreement and as such is an employee eligible to be included in the non-ICI Board Area 28 bargaining unit sought by LIUNA OPDC.

58. Given the above findings, concerning both the Paragraph 12 Non-Dispatched Employees and the Paragraph 12 Dispatched Employees, there still remains, however, some unresolved status disputes in this matter. The Board, in its decision of November 17, 2010, identified a number of other status issues that remained outstanding. In this regard, the Board has reviewed the Board's file, the Certification Worksheet and the parties' post-regional certification submissions. A number of the applicant's initial challenges have been subsequently withdrawn. Further, the parties have been able to reach agreement concerning certain other individuals. As a result, it would seem that there are only three (3) remaining status disputes, namely: (5) Daniel Coombs; (6) Gerry Cormier; and (8) Walter Gmetrick.

59. In reviewing the file, and the above noted documents, the parties are in agreement that the following (22) individuals are employees in the bargaining unit on the date of application and should properly be on the employer's Schedule "A" List of Employees:

> Kristopher Barnard, Peter Clements, Jen Coldas, Cody Horan, Clinton James, Thomas Joyce, Robert Kovacs, Angel Macgillivary, Jen Malcolm, David Morley, Cory Ouellette, Jim Shular, Drew Bath, Rod Darcey, Jarrod Hancock, Erin Holder, George Lunshof, Joe Nugget, Kevin Schlonies, Brendan Slade, H. Snow and Rick VanRooyen.

60. The Registrar is directed to consult with the parties as to the scheduling of another hearing date to deal with the remaining three (3) status disputes and any dispute that may arise in the identification as to who qualifies as falling within the class of "Paragraph 12 Non-Dispatched Employees". In this regard, the Manager of Field Services is directed to appoint a Labour Relations Officer to this matter to see if the Officer can be of assistance to the parties in trying to resolve any of the outstanding status issues prior to the next hearing date taking place.

61. The Board draws the attention of the parties to Information Bulletin No. 3 Part III (b) as to the responsibility for ensuring the attendance of the individuals that the parties claim should be on the list of employees.

62. The Responding party is directed to post copies of this decision for a period of thirty (30) days in a location or locations where they are most likely to come to the attention of these individuals in the bargaining unit.

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**0392-11-R** International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 58, Applicant v. **The Corporation of the Town of Richmond Hill**, Responding Party v. The Canadian Union of Public Employees and its Local 905, Intervenor

**Abandonment – Bar – Bargaining Rights – Bargaining Unit – Certification – Collective Agreement – The International Alliance of Theatrical Stage Employees ("IATSE") brought an application for the certification of a bargaining unit comprised of stagehands working in a local theatre operated by the Town of Richmond Hill – CUPE intervened and, along with the employer, took the position that the application was barred because the stagehands at issue were already covered by a collective agreement between CUPE and the employer – IATSE argued that CUPE did not hold bargaining rights for the stagehands because: stagehands are excluded from the collective agreement; if CUPE did hold bargaining rights, they were abandoned; and if bargaining rights existed they had expired because the bargaining rights flowed from a Letter Of Understanding which had not been renewed – The Board found the stagehands were covered by the collective agreement between CUPE and the employer which barred the current application – The Board also stated bargaining rights come from the collective agreement and the Letter of Understanding provided for how the stagehands would be covered by the agreement not whether they would be covered – Regarding the abandonment argument, the Board stated abandonment should be measured in years not months and any hiatus in representation relates to the quality of representation, not the right to representation – Application untimely, application dismissed**

**BEFORE:** *James Hayes*, Vice-Chair.

***APPEARANCES:*** *Ernest A. Schirru, Jim Brett* and *Katherine Ferreira* appearing on behalf of the applicant; *Tom Agnew, Samara Kaplan, Mary Lou Cosentino* and *Michael Grit* appearing on behalf of the responding party; *Gavin Leeb, Debbie Oldfield, John Cromwell, Grant Dart, Todd Field* and *Steve Duthie* appearing on behalf of the intervenor.

**DECISION OF THE BOARD:** December 8, 2011

1. This is an application for certification filed on May 3, 2011 by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 58 ("IATSE") pursuant to the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") with respect to the following proposed bargaining unit:

2. The Corporation of the Town of Richmond Hill (the "Town") responded to the application and the Canadian Union of Public Employees and its Local 905 ("CUPE") intervened.

3. Both the Town and CUPE take the position that the application is barred in that the stagehands in issue are covered by the subsisting collective agreement between them effective from April 1, 2010 until March 31, 2013 (the "CUPE collective agreement").

4. The Town abandoned its initial position that the stagehands were independent contractors before the hearing commenced.

5. IATSE submits that stagehands are specifically excluded from the CUPE collective agreement as they are excluded "technical staff" within the meaning of that agreement. In the alternative, IATSE submits that CUPE had abandoned any bargaining rights which it may have held for stagehands. In the further alternative, IATSE submits that, if CUPE's bargaining rights flowed from a June 25, 2008 Letter of Understanding ("LOU"), those bargaining rights terminated on December 31, 2009 when IATSE claims the LOU expired.

6. The parties provided an Agreed Statement of Facts. Mary Lou Cosentino, the Manager of Human Resources for the Town, gave evidence as did Todd Field, Chair of the Town bargaining unit within CUPE Local 905, and Grant Dart, a CUPE staff representative. I have no doubt that all witnesses testified credibly.

## Facts

7. The facts recited here are a composite of those derived from the Agreed Statement of Facts and the evidence given by the witnesses.

8. The Town opened its own theatre known as the Richmond Hill Centre for the Performing Arts ("theatre") in February, 2009. Building construction commenced in 2006 and a manager for the theatre was hired that summer.

9. Stagehands are required to perform the various tasks commonly associated with the live-entertainment industry. They perform work of a technical nature which lies at the core of IATSE's traditional craft jurisdiction. Various job descriptions were provided to the Board.

10. In May of 2008 discussions between the Town and CUPE took place, initially at a labour management meeting, concerning the stagehands projected to be hired. In the result the parties executed the LOU. The Town and CUPE agreed at that time that persons employed as stagehands were covered by the collective agreement. The LOU was drafted by the Town with the assistance of outside counsel.

11. When the LOU was executed the parties were uncertain about whether or not the stagehand positions would become full-time positions in the future. They reached agreements as to how the Flyman/Stage Rigger, Sound Technician, and Lighting Technician positions would be treated as "seasonal" under the collective agreement for the time being. It was agreed that, should it be determined that there was no need for full-time positions, the parties would discuss "an appropriate seasonal work term and service break for the seasonal theatre positions during the next round of negotiations". Ms. Cosentino testified that the Town had no understanding or expectation that the LOU had an expiry date attached to it. The Town understood that stagehands, unless they were independent contractors, were CUPE-represented employees. Ms. Cosentino told the Board that the stagehands remained seasonal employees until December 31, 2009.

12. Following upon internal employer discussions which occurred in 2009, the Town decided to move to an independent contractor model in 2010. There were concerns about the lack of "flex" in the collective agreement insofar as stagehands were concerned. CUPE did not challenge this Town approach by filing a grievance although Ms. Cosentino said "I don't think they were aware we had moved to independent contractors". The decision to contract out was made unilaterally by the Town without notice to CUPE.

13. The issue was next raised by CUPE at a labour management meeting held on January 17, 2011. This was the first such meeting which had been held since May 27, 2008, the meeting which immediately preceded the execution of the LOU. CUPE expressed concern that seasonal staff at the theatre were working up to 60 hours per week and stated its position that they were CUPE-represented employees. The Town said that it would speak to management at the theatre about the hours of work issue.

14. The issue was raised again by CUPE at the next labour management meeting held on April 29, 2011. At that time the Town advised that the stagehand positions had been contracted out but that "management will look into this further and draft a new Letter of Understanding for further discussion with the Union". No further letter was prepared as the IATSE application for certification was filed. There has been no further discussion of the issue at labour management meetings held since that time, given the pending IATSE application.

15. While the Town/CUPE collective agreement became effective as of April 1, 2007 it was not ratified until January 2008. Printing of the agreement was delayed due to a dispute about another matter. This permitted inclusion in the printed agreement of reference to the LOU although the LOU had not been executed until June 2008. (The Town and CUPE emphasize that reference to the LOU was made in the collective agreement) Reference to seasonal theatre employees in the Article 10.02 Temporary Employee provision was an inadvertent drafting error carried forward into the renewed agreement effective April 1, 2010 to March 31, 2013 but they are mentioned.

16. In cross-examination Ms. Cosentino acknowledged that various technical employees excluded from the CUPE collective agreement perform "hands on" work that some such technicians perform programming duties, and that theatre technician job descriptions also involve programming duties. She agreed that the LOU was not reproduced as part of the CUPE collective agreement and that she had no personal recollection of any discussion about seasonal employees in the last round of bargaining. She accepted that it was her practice to renew continuing LOU's with each collective agreement but stated that she didn't know if the LOU was active or had expired. She did not know when CUPE became aware that the Town was contracting out but said that it wasn't hidden. She stated that the stagehands were being paid as independent contractors even now.

17. The Article 1.01 Recognition clause in the CUPE collective agreement reads as follows:

> The Employer recognizes the Canadian Union of Public Employees and its Local 905, Richmond Hill unit as the bargaining agent for all of its employees save and except Supervisor, persons above the rank of Supervisor, Office, Clerical and Technical staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period.
>
> Office, Clerical and Technical staff is deemed to include the persons shown on the Association of Salaried Employees Classification Schedule.

18. Ms. Cosentino testified that the Salaried Employees Association ("SEA") was an employee association with which the Town bargained but that it was not a trade union under the Act. The "Salaried Employees Classification Schedule" was filed with the Board. It contains no reference to any stagehand positions. The Schedule is created by the Town. CUPE is not consulted about its composition nor has CUPE ever disagreed about who has been included on the list.

19. Mr. Field testified that he received a telephone call from a stagehand in approximately June 2010. He said that the individual had concerns about the number of hours he was working and asked about job security and benefits. He wanted to know more about being part of CUPE and that he wanted to know where his position stood. Mr. Field told him that he would contact his staff representative which he did. Mr. Dart explained to Mr. Field that the stagehands were already part of the unit. However, the individual never called Mr. Field back. Mr. Field also recalled that reference was made to stagehands, although not in a formal meeting, during bargaining in the last round. He said that one member of the union team asked across the table about the theatre positions and was told something along the lines that "we'll look at that in labour management" and that was the end of the matter. Mr. Field agreed in cross-examination that he did nothing further after the phone call with the stagehand, that he did not visit the theatre, and that he had no discussion with management about the theatre.

20. In his evidence Mr. Dart confirmed the conversation with Mr. Field in the summer of 2010 and his advice that the stagehands were already represented by the union. His recollection of the exchange with management during bargaining was that he was told that "we have an LOU, there is no need to discuss it at this table, we can deal with it elsewhere". In his mind, he believed that the union had a satisfactory response on that issue and that they could get on to the rest of

bargaining. With respect to the labour management meeting on January 17, 2011, the only issue for him was the number of hours people were working. For Mr. Dart the remaining question was only whether or not the LOU should be renewed or whether stagehands would come under the collective agreement as full-time employees.

21. In cross-examination Mr. Dart agreed that he did not speak to stagehands in the pre-negotiation phase. He knew stagehands were not paying dues, that no proposals were made concerning them, that the collective agreement contained no wage scales for stagehands, and that they were given no specific advice concerning collective agreement ratification.

### *Submissions*

22. The arguments of counsel set out below, as will be apparent, have been paraphrased and abbreviated.

23. Mr. Schirru for IATSE submitted that CUPE did not hold bargaining rights for stagehands in the first place. If CUPE did, they were abandoned. If bargaining rights existed at all, they flowed from the LOU, not from the collective agreement, and expired when the LOU was not renewed. CUPE could show no support for any voluntary recognition.

24. IATSE counsel argued that the Article 1.01 recognition clause explicitly excluded "technical staff" and that stagehands without a doubt performed technical functions. He suggested that the SEA exclusion deemed certain classifications to be excluded but their mention on the Classification Schedule did not mean that other technical positions were also not excluded. He referred to a contractor agreement given, he said, to stagehands in March 2011 suggesting that they were not being treated as CUPE-represented employees. He stressed that the stagehands themselves were ignored by CUPE until the instant application was filed. In essence IATSE submitted that there is no confirming evidence that either the employer or CUPE intended that stagehands be covered by the CUPE collective agreement. If they were ever covered at all, stagehands were included by virtue of the LOU which expired. Assuming without conceding that CUPE held bargaining rights on any basis, CUPE had abandoned those bargaining rights.

25. IATSE cited the following authorities: *J.S.Mechanical* [1979] OLRB Rep. February 110; *Marineland of Canada Inc.* [1990] OLRB Rep. December 1298; *Parnell Foods Ltd.* [1992] OLRB Rep. December 1164; *Harbourfront Centre* [1998] OLRB Rep. September/October 799.

26. For CUPE, Mr. Leeb emphasized that CUPE had addressed the stagehand representation issue as early as 2006 and as late as April 2011 on the eve of the IATSE application. The bargaining rights in question were confirmed by the employer in 2006 and had never been abandoned. He stressed that the practice of the parties should inform a proper interpretation of the scope clause and that the Town and CUPE had always understood that stagehands, if they were employees at all, should be CUPE-represented. In this respect he cited *Ben Bruinsma and Sons Limited* [1984] OLRB Rep. March 404. The LOU was referred to in the 2007-2010 collective agreement and seasonal theatre positions were referenced in the 2010-2013 agreement albeit incorrectly located.

27. Delays in addressing the independent contractor issue, and willingness to tolerate what Mr. Schirru had described as "slow rolling" by the employer, were attributable according to

CUPE to the "vagaries of the public sector" and reflected a high degree of cooperation between this employer and the union. There was nothing surprising about the parties concluding that stagehands are "your folks", that we will treat them as "seasonal" and "see how it goes". Given the size of the bargaining unit and the relationship, Mr. Leeb saw no issue in CUPE leaving the stagehand issue to be addressed in labour management meetings after bargaining was concluded.

28. CUPE emphasized that the stagehand issue was consistently raised whether or not with the vigour that some unions might have done. Counsel submitted that the quality of representation is not an issue which goes to whether or not bargaining rights have been abandoned citing *G.S. Wark Ltd.* [1996] OLRB Rep. September/October 811 at paragraph 11. He noted that the abandonment cases cited by IATSE involved situations where bargaining rights had been ignored for years.

29. For the Town, Mr. Agnew noted that the employer had recognized that stagehands were represented by CUPE since "day one". That position had never changed and was not adopted when or because IATSE arrived on the scene. He observed that the Town did not take the position when the theatre was being built that stagehands should be excluded as technical staff. He submitted that the wording of the recognition clause should be read as excluding only the staff listed on the Salaried Employees Classification Schedule. The Town argued that the practice of the parties was convincing evidence of the parties' mutual intent. The Classification Schedule was continuously updated and stagehands have never been included. This would be "an entirely different case" without paragraph two of the recognition clause; if so, it would have been necessary to sort out the meaning of "technical staff".

30. The LOU addressed the question of how stagehands were to be covered by the CUPE collective agreement and not whether they were covered. On its face the LOU recognized that seasonal theatre positions would be considered if necessary in the next round of negotiations. This implies not that the LOU expired but that it had ongoing effect. There were no particular years specifically identified and attached to the seasonal work terms mentioned in the LOU either.

31. The stagehand issue was brought up by CUPE during the bargaining process and the positions are identified in the renewed agreement. Even if the LOU could be said to have expired, there are still those references in the collective agreement. The Town has reconsidered its position concerning the independent contractor issue and nothing turns on it. If stagehands are employees within the meaning of the Act, they are CUPE-represented which has always been the Town's position. CUPE never abandoned those bargaining rights.

### *Decision*

32. The Board understands why this application for certification was filed by IATSE.

33. From the point of view of IATSE and those persons who supported the application, there was no obvious sign that CUPE claimed to represent stagehands at the Town. At least since 2010 and up and until this application was filed, the Town had taken the position that stagehands at the theatre were independent contractors. It is fair to say that CUPE had not exercised or pursued the bargaining rights which it now claims with any particular urgency.

34. IATSE is a trade union which has traditionally represented stagehands in multiple locations across North America for many decades. It is no doubt the case that the IATSE application prompted the Town to re-evaluate its position concerning the independent contractor issue.

35. Having said that, the Board concludes that this application for certification is barred by the CUPE collective agreement with the Town.

36. The evidence is clear that both the Town and CUPE agreed that stagehands were covered by the Article 1.01 Recognition clause long before the IATSE application was made. This was not an opportunistic agreement dubiously reached in the shadow of an application by another trade union.

37. The understanding that stagehands would be CUPE-represented was reached nearly three years before the instant application, when the LOU was executed in June 2008. The Town did not list stagehands on the Classification Schedule when they were first employed in the 2009 season as the Town could have done. From that point forward CUPE and the Town conducted themselves consistently according to the original understanding. The representational issue was first raised by CUPE in May 2008 many months before the opening of the theatre. It was last raised a few days before the IATSE application.

38. Furthermore, in my opinion, their mutual agreement on this point was entirely consistent with a plausible interpretation of the Article 1.01 Recognition clause. Article 1.01 describes a conventional 'all employee' full-time bargaining unit. Apart from supervisory exclusions, it otherwise provides only for the exclusion of office, clerical, and technical staff included on the Association of Salaried Employees Classification Schedule. It requires no semantic gymnastics to conclude that Article 1.01 may be read to exclude only those "technical staff" listed on the Classification Schedule from CUPE representation.

39. While IATSE counsel counters with an alternative interpretation-- that those exclusions include but are not limited to classifications specifically identified on the Schedule— that otherwise plausible alternative does not line up with the practice of the parties. In the circumstances the Board is not prepared to quarrel with the understanding of the actual parties to the agreement, an understanding supported both by a reasonable interpretation and apparently good faith practice.

40. The alternative IATSE argument based upon the LOU also fails. The bargaining rights in question for stagehands did not originate and expire with the LOU. As Mr. Agnew submitted, the LOU provided for how the stagehands would be covered by the collective agreement not whether they would be. The CUPE bargaining rights in question come from the language of the collective agreement.

41. The abandonment submission is also a non-starter. While there may have been a hiatus in CUPE's attention to the stagehands, any hiatus relates to the quality of representation not to the right to represent. There was not egregious inaction sufficient to jeopardize a continuing claim to bargaining rights. Prior Board findings of abandonment in the case law, absent express conduct, speak to time periods of years not months. Whatever might have been said, about the merits of the Town's position concerning stagehands as independent contractors,

is not before the Board, CUPE never conceded or intended to concede that stagehands employed by the Town were not covered by its collective agreement.

42. For the foregoing reasons, the Board finds that the stagehands in question are included in the bargaining unit which is the subject of the CUPE collective agreement with the Town effective April 1, 2010 until March 31, 2013.

43. The instant application is untimely having regard to subsection 7(4) of the Act. It is therefore dismissed.

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**3174-09-U; 3175-09-U** International Brotherhood of Electrical Workers, Local 1739, Applicant v. International Brotherhood of Electrical Workers, **First District, Canada** and Edwin Hill, Responding Parties v. International Brotherhood of Electrical Workers, Local 353, Intervenor; International Brotherhood of Electrical Workers, Local 894, Applicant v. International Brotherhood of Electrical Workers, First District, Canada and Edwin Hill, Responding Parties v. International Brotherhood of Electrical Workers, Local 353, I.B.E.W. Local 894 Welfare Trust Fund, I.B.E.W. Local 894 Pension Plan Trust Fund, Intervenors

**Alteration of Jurisdiction – Apprehension of Bias – Construction Industry – Interference in a Trade Union – Practice and Procedure – The IBEW ordered two Locals (894 & 1739) to merge with a third, much larger, Local (353) – The two Locals brought an application alleging that the IBEW did not have just cause to order the merger and accordingly had breached sections 147 & 149 – The Locals brought a motion that the Vice-Chair was biased and that a reasonable apprehension of bias existed, relying only upon previous decisions written by the Vice-Chair – The Vice-Chair refused to hear the motions as the previous decisions "speak for themselves" (and cannot be added to: see *Jacobs Catalytic*) and because the motion appeared to be a delay tactic – After an extensive review of the evidence, the Board found the IBEW had just cause under sections 147 and 149 to make significant and substantial structural changes to the Locals to address the concerns of the IBEW as a whole and that those structural changes may well have been a merger of the three Locals – The challenges facing the Locals represented a clear danger to the future of the Locals themselves and the IBEW as a whole and the Locals could not or would not rise to the challenges before them, requiring the IBEW to act – The Board found however that the IBEW chose to act unilaterally and imposed changes without consulting the Locals involved – The Board noted that there were a number of problems with the merger and ordered the IBEW to meet with the three Locals to discuss a number of specific issues, including whether there are any alternatives to merger – Applications dismissed with directions**

**BEFORE:** *David A. McKee*, Vice-Chair.

***APPEARANCES:*** *L.A. Richmond* and *Tom Leduc* appeared on behalf of International Brotherhood of Electrical Workers, Local 1739; *L.A. Richmond, John Gillett* and *T. Dorgan* appeared on behalf of International Brotherhood of Electrical Workers, Local 894; *Harold Caley,* *Doug Wray* and *Phil Flemming* appeared on behalf of International Brotherhood of Electrical Workers, First District, Canada; *James Robbins* appeared on behalf of the IBEW Construction Council of Ontario; *James Robbins* and *John Grimshaw* appeared on behalf of the IBEW Electrical Power Council of Ontario; *Susan Ursel* and *Steven Martin* appeared on behalf of International Brotherhood of Electrical Workers, Local 353; *Donald K. Eady* and *Susan Bird* appeared on behalf of the I.B.E.W. Local 894 Welfare Trust Fund and the I.B.E.W. Local 894 Pension Plan Trust Fund.

**DECISION OF THE BOARD:** December 19, 2011

**Introduction**

1. These two applications are applications brought pursuant to section 96 of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act") alleging that the International Brotherhood of Electrical Workers (the "International Union" or the "IBEW") violated sections 147 and 149 of the Act when it ordered Locals 894 and 1739 of the IBEW to merge with Local 353 of the IBEW. Other sections were specified in the initial applications but little reference was made to them in argument.

2. The IBEW is an international union that represents electricians, linemen and communications cabling specialists. It is a "parent union" for the purposes of sections 147 and 149. It has affiliated local unions throughout North America. The head of the IBEW is the International President, Mr. Ed Hill. He is based in Washington D.C. The First Vice-President, Mr. Phil Flemming, is the next level down in the hierarchy. He has responsibility for all of Canada.

3. International Brotherhood of Electrical Workers, Local 894 ("Local 894") is a local union with a geographic jurisdiction covering the Regional Municipalities and Counties of Durham, Victoria, Peterborough, Northumberland and Haliburton. Its office is in Oshawa. Its Business Manager is Mr. John Gillette. International Brotherhood of Electrical Workers Local 1739 ("Local 1739") is a local union with a geographic jurisdiction of the County of Simcoe and the Regional Municipality of Muskoka. Its office is in Barrie and its business manager is Mr. Tom Leduc. I have referred to them in this decision as the two "Local Unions".

4. International Brotherhood of Electrical Workers, Local 353 ("Local 353") is the Toronto local union with a geographic jurisdiction of Toronto, Peel and part of Halton (i.e., Board Area 8). Its business manager at the relevant time was Mr. Joe Fashion. It has a much larger membership than either of the other two locals combined.

5. The International Brotherhood of Electrical Workers – Construction Council of Ontario ("IBEW-CCO") is a provincial council of trade unions to which all local unions in Ontario are affiliated. It intervened in these applications for purposes of protecting its interest as the bargaining agent of the Principal Agreement, the Province-wide collective agreement in the ICI sector (for purposes of section 162) and all other sectors except for certain specific agreements (e.g., the EPSCA collective agreement).

6. These applications allege that the International Union acted without just cause when it ordered the merger of Locals 1739 and 894 into Local 353 on January 8, 2010. Mr. Flemming held meetings with the local unions to discuss how the merger would be implemented, concluding

on January 21, 2010. The merger was to be effective February 1, 2010, with a number of conditions on the merged local union. Pursuant to subsection 147(5) the merger has not been in effect since the two applications were filed on January 27, 2010.

7. The Local Unions allege that the International Union had no just cause to order the merger. I conclude that the International Union did have just cause to do something that affected the jurisdiction and autonomy of the Local Unions and that, of necessity, the change involved major structural changes to the Local Unions. That change would require the centralization of the key functions of the hiring hall, organizing and the use of stabilization or market recovery funds. It may be that a merger of the three local unions is the only way to effect this change. However, the decision to merge the Local Unions with Local 353 was taken without an awareness of certain problems in the merger, and as a result the Board is required to make certain directions pursuant to subsection 149 (4). The remedies ordered reflect these conclusions. Essentially the Board orders the parties back to where they were in December 2009, before the decision to merge was made, and requires them to address the structural changes necessary to the IBEW and the three local unions to address the serious issues that the Union as a whole faces.

**Bias Motion**

8. At the commencement of the first day set for hearing oral evidence, counsel for the Local Unions' said he wished to make a motion. He stated that his motion was a request that I recuse myself on the grounds I was biased in favour of the International Union. He stated he was arguing on the basis of actual bias and a reasonable apprehension of bias.

9. While no notice had been provided to the Board, counsel for the Local Unions did send an e-mail to other counsel at the end of the day on the previous Thursday about his motion. One of the counsel for the International Union forwarded a copy of the e-mail with the comment "it would appear that [counsel] has not provided you with a copy of his e-mail". I did not reply. On the morning of Monday, September 26, 2011, I provided counsel with a printed copy of the e-mail and asked if that was in fact his motion. He confirmed it was. The text of his e-mail is as follows:

> As a courtesy I am advising that the Locals will take the position before the Board that Vice Chair McKee must recuse himself from this case as he is not impartial but biased in favour of the International Union or alternatively he appears to be biased in favour of the International Union.
>
> This is based on his conduct in this case and in particular his conduct in refusing to hold a hearing, in reversing the order of proceedings, in limiting the evidence that can be called, in refusing to require the International Union to demonstrate just cause and in denying the Locals the right of cross examination of key witnesses. The proceeding now lacks all the attributes of a fair hearing and is being conducted contrary to the rules of natural justice in a democracy.
>
> This motion is also based on the attached decision. Vice Chair McKee by that decision has effectively written sections 147 and 149 out of the Act and authorized International Unions to take any actions, including the merger in this case, without regard to the autonomy and jurisdiction of the Local

> Unions which are protected by the statute and without having to demonstrate just cause.
>
> Vice Chair McKee through his actions in this case and his decision attached has prejudged the result in this proceeding and must allow an independent decision maker to determine this matter afresh.

10. I asked counsel if there were any facts he relied on other than the decisions in this case and the decision in *United Brotherhood of Carpenters and Joiners of America 1256 v. United Brotherhood of Carpenters and Joiners of America,* 2011 CanLII 52892 (ON LRB) (the "Carpenters' case"). He said that he relied exclusively on those decisions. I then requested him to address the issue of whether I should hear the motion at all, since I had said what I had to say in those decisions and thought further comment was unnecessary and inappropriate. Counsel addressed argument on the issue. I ruled that I would not hear the Local Unions' motion for the following reasons.

11. The motion is essentially a motion that I recuse myself because the decisions issued so far in this proceeding, and one earlier decision in another proceeding, demonstrate bias. On a subjective basis I have no concern whatsoever. I do not believe that I have prejudged this case and have no particular bias or inclination to favour any party or any class of parties in this or any application under sections 147 and 149. The Local Unions' argument then is that the decisions displayed a level of intellectual dishonesty that is evident to any reasonable person, or are so irrational as to be explicable only by bias on my part. The bias can only be said to stem from dishonesty or a concealed favouritism towards one party, or that I have deluded myself to the point where it is evident to any reasonable person other than myself that the decisions demonstrate bias.

12. I do not believe I should hear this motion. The decisions speak for themselves. The Court of Appeal in *Jacobs Catalytic Ltd. v. International Brotherhood of Electrical Workers, Local 353,* 2009 ONCA 749 (CanLII) found in that case that it was inappropriate for the Board to add to or "improve upon" its decision. While the facts of this case are not identical to those in that case, the wisdom of letting a decision speak for itself, particularly where it is alleged that the decision itself demonstrates bias, is compelling. While I indicated that counsel was of course free to raise the issue before a court on an application for judicial review, I declined to hear it.

13. In addition, the fact that the dates for hearing the oral evidence had been set in March of 2011 to commence on September 26, 2011, the fact that the last decision in these applications was made on August 5, 2011, and the decision in the Carpenters' case was released on August 29, 2011, combined with the fact of the lack of any notice to the Board, suggested that the motion was made simply to delay the start of the proceedings.

14. Counsel for the Local Unions then demanded that I adjourn the proceeding and consult with my colleagues and the Chair of the Board about this decision before proceeding further. I declined to do so. Counsel then accused me of "showing contempt for [his] clients", and "believing [myself] so far above them and everyone else involved in this case" and that I was creating my own personal process and could give no appearance of, and could not conduct, a fair hearing. He said that I had no credibility with his clients.

15. He further stated that he would "write to the Board and write to the Minister" about this. The reference to the Board (presumably the Chair) is self-evident since all Vice-Chairs report to the Chair. The reference to the Minister is less evident. In all the time I have been a Vice-Chair I have never spoken to any Minister of Labour or any person from any Minister's office. Presumably this was a reference to the fact that Vice-Chairs are all appointed by Order-in-Council for a fixed term which may or may not be renewed, and that decision is made by Cabinet.

16. I advised counsel that he should feel free to take any steps that he felt were appropriate and that his clients instructed him to take. His response was "my job is to get you off this case and I'll do whatever I have to, to get you off." He then demanded, loudly, that I provide him with written reasons for my decision before the end of the day. I responded that I would provide reasons as and when appropriate. Nothing more was said about the motion and we proceeded to hear the first witness.

17. Counsel returned to this theme very briefly before commencing his final argument and after all of the oral evidence was heard. He stated that his clients had been deprived of a fair hearing because of the procedure adopted. He stated very briefly that I had done so by ordering a consultation in the face of what he said were disputed facts; that I had erred in "reversing" the proper order of proceeding; that I had erred in requiring the Local Unions to proceed first; that I had refused to permit them to bring a bias motion; that I had refused the Local Unions' motion to require the attendance of Mr. Ed Hill, the International President of the IBEW and certain other individuals; that I had refused to require Mr. Phil Flemming to produce certain notes and memoranda during his cross-examination; and by requiring will-say statements and limiting oral evidence to those statements. He attributed this to a desire on my part to shield the International Union from being required to give evidence and its reasons for the amalgamation of the three unions, and that this was evidence of bias or gives rise to a reasonable apprehension of bias. He elaborated on the statements for another minute or two and then went on to make final argument.

18. The prior decisions speak for themselves. I deal with the issues of process and what happened during the consultation below. The Local Unions may not like those rulings, but that is not itself evidence of bias, nor could it give rise to a reasonable apprehension of bias in the eyes of an objective observer informed of all the circumstances of the case. Although counsel did not ask for a ruling or response to his motion that I "declare a mistrial" and order the matter to be heard by way of hearing rather than consultation in front of another panel before commencing his final argument, I decline to do so.

19. This level of vehemence was surprising at this stage of the process. The previous hearings and written submissions had all been carried on by all parties in a civil and professional fashion. There is nothing in the manner in which this application had progressed to this stage (nor in the previous Carpenters' decision) that provides any sort of context for this level of personal vituperation. I understand that counsel feels strongly about these particular provisions of the Act. He may well have been disappointed with the result in the Carpenters' case or others. We have all experienced the disappointment of not succeeding in a case we believed was significant and which we believed we should win. That is not the basis for a bias allegation (see *International Brotherhood of Electrical Workers* [1997] OLRB Rep. Nov/Dec 1005) nor is it any sort of reason for the language used in this motion and at other points in the proceeding.

**Process**

20. The process adopted by the Board is described to some extent in the previous decisions. Some of these decisions use vocabulary familiar to those who appear regularly before the Board without much explanation. In this case the Local Unions at various times during the hearing of the oral evidence described the process in the following terms: "I have no idea what the process is; it is your process, you make it up as you go along." In response to a suggestion by counsel for the International Union that he was being contemptuous of the Board and of the Vice-Chair in particular, he denied that he was, asserting that "I am contemptuous of the process; the process is a joke". Since the consultation process played a role in certain evidentiary rulings, and because the position of the Local Unions in final argument was that the process adopted made any fair hearing impossible, it is appropriate to set out the basis and operation of this consultation at this point.

21. Subsections 110 (16) to (21) provide as follows:

> **Practice and procedure**
> (16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions.
>
> **Rules of practice**
> (17) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable.
>
> **Same**
> (18) The chair may make rules to expedite proceedings to which the following provisions apply:
>
> 0.1 Section 8.1 (Disagreement by employer with union's estimate).
>
> 1. Section 13 (right of access) or 98 (interim orders).
>
> 2. Section 99 (jurisdictional, etc., disputes).
>
> 3. Subsection 114 (2) (status as employee or guard).
>
> 4. Sections 126 to 168 (construction industry).
>
> 5. Such other provisions as the Lieutenant Governor in Council may by regulation designate.
>
> **Effective date of rules**
> (19) Rules made under subsection (18) come into force on such dates as the Lieutenant Governor in Council may by order determine.
>
> **Special provisions**
> (20) Rules made under subsection (18),
>
> (a) may provide that the Board is not required to hold a hearing;

> (b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and
>
> (c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances.
>
> **Conflict with Statutory Powers Procedure Act**
>
> (21) Rules made under subsection (18) apply despite anything in the *Statutory Powers Procedure Act*.

22. Rules 41.1 to 41.3 of the Board's Rules of Procedure provide:

> RULE 41 EXPEDITED PROCEEDINGS
>
> **41.1** Rules 41.2 and 41.3 apply to the *Ambulance Services Collective Bargaining Act, 2001, Public Sector Labour Relations Transition Act, 1997*, s.32 of the *Local Health System Integration Act, 2006*, Part IV of the *Crown Employees Collective Bargaining Act, 1993*, section 61 of the *Occupational Health and Safety Act*, section 118(2) of the *Employment Standards Act, 2000*, sections 31, 37, and 71 of the *Colleges Collective Bargaining Act, 2008*, and sections 8.1, 13, 98, 99, 114(2) and 126 to 168 of the *Labour Relations Act, 1995*.
>
> **41.2** In order to expedite proceedings, the Board or Registrar may, on such terms as either considers advisable, consult with the parties, conduct a pre-hearing conference, issue any practice direction, shorten or lengthen any time period, change any filing or delivery requirement, schedule a hearing, if any, on short notice, or cancel such hearing, or make or cause to be made such examination of records or other inquiries as either considers necessary in the circumstances.
>
> **41.3** Where the Board is satisfied that a case can be decided on the basis of the material before it, and having regard to the need for expedition in labour relations matters, the Board may decide an application by limiting the parties' opportunities to present their evidence or to make their submissions, or without a hearing.

23. The ability to determine the Board's own practice and procedure is of course ultimately defined by the rules of natural justice. The essential issue in this case, as in most consultations, is whether it was necessary to hear oral evidence to establish facts on which the Board would rely in making a final decision. This is more easily stated than decided.

24. The Board uses consultations most commonly in jurisdictional disputes: disputes between two craft construction unions about which trade should have been assigned particular work. Since Rule 41 was enacted, only two or three of the many jurisdictional disputes filed have involved any oral evidence at all. Jurisdictional disputes are based on well-defined principles, the relevant facts are usually easily determined on the basis of documentary evidence. In the case of "area practice" evidence (which trade is usually assigned to perform the work in a given geographic area) documentary evidence is often the only reliable evidence to consider.

25. Disputes about what sector of the construction industry a particular project falls in are conducted by consultation, but oral evidence is often heard. The level of technical detail of information about the work performed or the nature of the project is often such that oral evidence is needed to supplement the documentary evidence. When oral evidence is arguably required, the Board's practice is to require the party wishing to call the oral evidence to file a will-say statement. In some cases (e.g., *V. K. Mason Construction Co.*, [2009] OLRB Rep. Nov/Dec 985) the filing of a will-say statement led parties to agree to accept some of the will-say statements for what they were worth and argue the case on that basis.

26. Applications under sections 147 and 149 (often called "Bill 80" applications, referring to the Bill number by which sections were introduced into the Act) have proceeded by way of a full hearing before Rule 41 was created. Sections 147 and 149 were added to the Act only in 1995, and hence it would have been inappropriate to hold a consultation in those first few cases in any event. Consultations had been held in *International Brotherhood of Electrical Workers and Guild Electric,* [2006] OLRD No. 1285; *United Brotherhood of Carpenters and Joiners of America,* [2009] OLRB Rep Nov/Dec 972; *United Brotherhood of Carpenters and Joiners of America,* 2011 CanLII 52892 (ON LRB); and *International Union of Bricklayers and Allied Craftworkers,* [2007] OLRB Rep Jan/Feb 101. I have sat as the Vice-Chair in some applications under section 147 and 149 that were held as hearings; for example *International Union of Bricklayers and Allied Craftworkers,* [2004] OLRB Rep March/April 193. In the latest Carpenters' case, no oral evidence was called as there were no material facts in dispute. In this case, for reasons set out in the decision of November 1, 2010, some oral evidence was heard.

27. Applications under sections 147 and 149 present a particular problem. They deal with either an assumption of control of a local union by the parent union or the imposition of a permanent structural change to that local union. In this case what is at issue is the continued existence of the two applicant local unions. In all such cases, many if not all members of the local union feel a visceral and intense identification with their home local which is just as intense as their connection and identification with their own trade. In this case, as well as some others, the members of a local union identify the existing structure with the preservation of job opportunities that they fear losing if that structure changes. These strong feelings are reflected in the way cases are presented. Some parties feel the need to state strongly felt opinions repeatedly to express the depth of their commitment to them. In addition, parties may feel keenly any real or perceived slights or injuries that must be explained in intense detail to provide a full airing of their feelings.

28. Whatever cathartic value such a hearing may have, the purpose of a proceeding before the Board is to ascertain relevant facts and applicable law, not to provide an opportunity for venting by the parties. In addition, the nature of proposed changes by a parent union are often seen by those who are affected by those changes to proceed from corrupt, improper or similarly destructive desires on the part of the parent union. Sometimes they are, but less frequently than is supposed. Satisfying as it may be to see the source of the change, generally the decision-maker in the parent union, on the stand to be pilloried in cross-examination, the real question is whether oral evidence adds anything to the case. In this case the effective decision maker was Mr. Flemming, and he did in fact take the stand.

29. Further, an application under section 147 brings with it a mandatory statutory stay of the parent union's actions. Provided a local union has adequate financial resources, there is no particular incentive to reach a conclusion that brings with it the risk of a change to the status quo

which is preserved by that stay. The Board currently schedules cases having regard to the availability of counsel. When hearing dates were cancelled in March, I set the number of dates that the parties estimated they would need to present their cases. Dates were not available until September. It is always possible that plans that a panel makes will prove unworkable and that dates must be adjourned and set for a time another 6 months away. However, there is an obvious cost to doing so as well as the inherent injustice caused by delay. In this case the hearing of oral evidence began 21 months after the applications were first filed. The time was necessary for the parties to prepare their cases, but those efforts were not to be lightly disregarded.

30. The process of identifying what the real issues are in any case requires a detailed statement of issues from the parties and may require an opportunity to reply to one another several times. In this case the parties took advantage of that opportunity more than once. The process enables the Board to identify where there are disputed facts that are likely material to the decision and hence require oral evidence for the resolution, and those where there is no difference, or no material difference between the parties. That assessment is one that may change over time and requires constant reassessment of the panel hearing the case.

31. A consultation process also requires that the parties focus early on in their case as to what facts they rely on or wish to establish. They must be able to identify the documents or witnesses they wish to call and what those witnesses will say. That requires an extensive opportunity for documentary discovery. Any document relevant to the issues and proceedings will be produced and they were in this case. (There is one evidentiary issue dealt with below where the local unions say they were deprived of the production of relevant documents.)

32. In this case I did permit the local unions to call oral evidence. In the decision of November 1, 2010 at paragraphs 17 to 42, I concluded:

> 35. Predicting the future is inherently uncertain. The applications refer only to the belief of the Local Unions that this will happen. In paragraph 19 of the application of Local 1739, the applicant states:
>
> > Equally important is the structure of the industry in Toronto. Most large electrical contractors have a large permanent workforce. With total mobility there will be little if any need to utilize the hiring hall of Local 353. In lean times it is more practical to impose a temporary layoff and simply to recall those temporarily laid off rather than use the hiring hall. In busy times, crews can be scheduled to minimize new hiring. The large contractors will be able to solidify the industrial model and use the hiring halls only for unusually large jobs. With the rights to name hire 50% of their employees the hiring hall of Local 353 becomes less and less important to the contractors. The chances of Local 1739 members actually been hired by these contractors are remote and small; these members know this.
>
> 36. There are no facts on which the members are said to "know this". The Local Unions wish to call witnesses, specifically the two business managers of the two Local Unions, to testify to this issue. However, there is no indication of the factual basis on which they will seek to base their conclusions or any indication of what evidence they would give to address any factual issue.

> 37. Given that this case involves the merger of two smaller Local Unions into a much larger third Local Union, I conclude that it may be of value to hear this oral evidence from the two Local Unions. Each of the applicant Local Unions will be permitted to call one witness each, presumably the business manager of the Local to give evidence on this point only. However, given the lack of any factual particulars, the following conditions apply:
>
> > 1) Local 894 and Local 1739 will provide a will-say statement with respect to the evidence that the two witnesses will give so that the other parties will know the case they have to meet on a factual basis. The will-say statements must be filed **on or before November 26, 2010**.
> >
> > 2) Time limits may be imposed on examination in chief and cross-examination for each of the two witnesses. It is impossible to say whether that will be necessary before seeing all of the will-say statements. Local 353 in particular may find its cross-examination severely limited.
> >
> > 3) If, following the receipt of the will-say statements, either International Union or Local 353 seeks to call a witness to give oral evidence in reply, the same conditions will apply to those witnesses. These will-say statements, if any, must be delivered **on or before December 22, 2010**.

33. While I did not realize it at the time, this amounted to an open-ended invitation to add any fact or statement to the will-say statements and ultimately to the oral evidence from the two declarants.

34. When the production of certain financial records of the intervening union, Local 353, was not made in a timely fashion, I cancelled three days of hearings on the motion of the two Local Unions. The cancellation of these days was effected despite the fact that the Local Unions ought to have been asking for the documents that should have been produced long before they were. They stated they wished to consider whether or not the addition of those documents to the record was something about which the two witnesses, who were to give oral evidence, had anything to say. In the end, they had very little to say about the financial statements in oral evidence (and did not add to their will-say statements), but it was still appropriate to adjourn those dates to ensure that the Local Unions had the opportunity to consider what other evidence they might wish to lead in response to those documents.

35. This process does reduce, and hopefully eliminate, the ability of a party to add to its case as it goes along. There is no inherent virtue in a disorganized hearing process, or litigation by ambush, much as both of them may have a particular tactical appeal.

36. Aside from a degree of organization, the process enables the parties and the Board to look at what is and what is not in dispute in this case. For example in this case, the International Union relied heavily on a report commissioned by the International Union from Mr. Tim Armstrong. Mr. Armstrong retained an economist, Mr. John O'Grady, who prepared certain statistical information and summaries. From these summaries, and from interviews with the persons identified to him as relevant parties, Mr. Armstrong arrived at certain recommendations to the International Union. The Local Unions disputed both the statistical analyses and the

conclusions drawn. In response to a request for production of the data that underlay this statistical analysis, I ordered production of all of the raw data. The Local Unions had the data analyzed by an economist, Mr. Hugh Mackenzie and another organization, Strategic Insights. This led to a series of reports, responses and counter responses. Having reviewed all of them, I concluded in the November 1, 2010 decision that it was not necessary to hear oral evidence from the economists. That they had nothing more to say was evident from the number of reports filed. There were a number of other evidentiary matters that arose during the hearing of oral evidence that are dealt with below.

*Evidentiary Rulings*

37. During oral evidence the issue of process arose in a number of instances. I review some of these evidentiary rulings at this point, not because they are of significance in themselves but because the issue of process was so significant in the argument of the Local Unions. The first witness was Mr. John Gillette, Business Manager of Local 894. In chief he was asked about what conclusions he drew from the financial statements of Local 353 produced after the March 23, 2011 decision and filed by Local 353 in these proceedings. Counsel for the International Union objected to that question on the grounds that there was nothing in his reply will-say statement about it. That statement was filed after the financial statements have been produced. I ruled that the question was proper since Local 353 could hardly be permitted to file documents and call oral evidence on those documents to which the Local Unions could not reply in presenting their own case.

38. In the cross-examination of Mr. Gillette, counsel for the International Union sought to cross-examine him on the basis of certain documents in the International Union's response. Counsel for Local 894 objected on the grounds that it was not referred to in Mr. Flemming's will-say statements. I ruled that he could be cross-examined on it since the documents were clearly before the Board. Counsel for Local 894 responded "you are making up the rules as you go along. There is no evidence about this in Mr. Flemming's will-say statements. You are making up the rules, I'm trying to follow them but I don't understand them." I permitted the cross-examination to proceed.

39. At a later point, counsel for the International Union asked Mr. Gillett questions about the practice of Local 353 in permitting the layoff of employees in certain circumstances (payment of the health and welfare and pension premiums) without requiring those members to return to the hiring hall list, and Mr. Gillett's view of this practice. Counsel for Local 894 objected on the basis that this was not in Mr. Flemming's will-say statement. I ruled that the question was a proper one because it was cross-examination on a subject covered in examination-in-chief without objection. The same objection and the same ruling were made much later when counsel for the International Union sought to cross-examine a statement made by Mr. Gillett in his testimony in chief which had not been included in his will-say statement about his expectation that the membership of Local 894 would double or treble in 5 to 7 years.

40. During the examination of Tom Leduc, Business Manager of Local 1739, counsel for the Local Unions asked a question about how he had come to certain conclusions about a meeting that was called to implement the mergers that had been ordered. The International Union objected to the question. I asked counsel for an explanation as to why the issue had not been raised in the pleadings and will-say statements. Counsel replied: "OK, I am moving on from that if you don't think it's relevant, well I suppose you think nothing is relevant". I asked counsel to

identify the basis on which he sought to pursue that line of questioning. He replied: "you make your own rules, it doesn't matter, if you're going to and if you don't care it doesn't matter. If you don't let them speak it is up to you". He then said he would address the same issue later. I was not therefore required to make any ruling.

41. There were three other evidentiary rulings that were of somewhat greater significance during the cross-examination of Mr. Flemming and I deal with them at the appropriate point in this decision.

### *Documentary Evidence*

42. The Local Unions argued that the process left them uncertain as to what was and was not "evidence" for the purposes of these applications on several occasions. I did not and do not accept that submission. There were a great number of documents filed in these applications. No party challenged the authenticity of a single one of them. No party suggested at any time that the documents were deliberate misstatements of what they purported to record. That is, correspondence was sent and received as indicated by and to the parties whose names appear on the correspondence. The collective agreements and the trust fund documents were true copies of what they purported to be. The financial statements were accepted as the financial statements of the three local unions and the various trust funds for the years indicated. The reports of Mr. Armstrong and Mr. O'Grady were based on a summary and an analysis of certain other documents created in part by the three local unions. All parties had copies of all of those primary documents and no party asked them to be put before the Board. The expert reports are, of course, reports of those who composed them.

43. There was some question about the "minutes" taken during what the International Union called the Implementation Meetings in January of 2010. The author of those notes was not called as a witness. However, Mr. Flemming, Mr. Gillett and Mr. Leduc were all present at the meeting, and were all cross-examined on them.

44. Counsel asked repeatedly what status the documents had before the Board. I replied on each occasion that they were all documents before the Board and would be treated as true copies of what they purported to be without formal proof of their identity. Any and all of them would be given whatever weight was appropriate. At one point counsel for the Local Unions asked that certain documents be noted as exhibits (the three that were attached to his clients' will-say statements). I agreed to do so for ease of identification, but added that it made no difference in itself to the weight or value of the documents. After three documents were marked as exhibits, no one asked to have any the other documents marked as exhibits and all parties referred to a document filed in whatever manner they chose.

## The Merits of the Applications

### The Commencement of the International Union's process - Motive

45. The Local Unions allege that the genesis of the merger was a desire by certain large contractors based in Toronto to have complete and unrestricted mobility within the geographic area of the Local Unions and Local 353. It was, in their view, a decision on the part of the IBEW to "cave in" to the demands of these large contractors. They accuse the International Union of getting a poor deal as they received nothing in return for agreeing to this demand.

46. The difference between that statement and Mr. Flemming's evidence is more a matter of a rhetorical colour than of anything of substance. When asked in chief what had prompted a review of the situation of Local 353 and the two Local Unions, he said there were two things that caused him to do so: a review of the membership ratios compared to population (a very approximate measure of market share explained below) and complaints by large Toronto contractors about their desire to take their crews of Local 353 members into the geographic area of the two Local Unions. Mr. Flemming did not testify that he regularly reviews the membership ratios of local unions in Ontario or Canada (although he apparently receives those reports regularly) or that he had been noticing any changes among the ratios of the three local unions for any period of time. I conclude that the first time he began to consider the status of three local unions was at the instance of one or more of these large Toronto contractors. Certainly the Bank of Montreal project referred to in *IBEW local 1739 v IBEW and Guild Electric,* [2006] OLRD No. 1285 no doubt led to insistent and urgent demands on the International Union: in that case the International Union took control of the job from Local 1739. No doubt it was not the first or last time that Mr. Flemming received such complaints. The Local Unions filed a newsletter of the Electrical Contractors Association of Ontario ("ECAO") in which the executive vice president, Mr. Eryl Roberts, said in part:

> These new markets are perfect for all ECAO electrical contractors, but require a different approach to performing the work if we, the mainstream contractors, are to be competitive against the non-union specialty firms. Opportunities to change strategic directions like this don't come along very often. The challenge for us will be to ensure that our labour pool and labour relations are assets, not liabilities, as we try to participate in this work.
>
> Enhanced mobility makes the list of required changes due to fundamental shifts in the Ontario economy and contractor businesses.... The preferred solution is the amalgamation of local unions and a corresponding reduction in the number of area ECA's, but this is too long-term for consideration before 2010. As an alternative, full mobility makes sense and may even make the need for amalgamation irrelevant.

47. Given the tenor of this entire article, there is no doubt that the ECAO had been asking for that sort of thing for some time and in more locations than just Toronto. While Mr. Flemming said that he was not aware of this particular article, he testified that he was certainly aware of the contractors' complaints of this sort.

48. I accept the Local Unions' proposition that the genesis of the merger decision lay in the complaints of these contractors. There is nothing *per se* wrong with that. As the Board said in *Labourers' International Union of North America,* 2000 CanLII 12252 (ON LRB), (which was never litigated to a conclusion), where the Board was dealing with a challenge to the alteration of geographic jurisdiction of a local union, of sections 147 and 149:

> 8. The "Bill 80 amendments" were added to the Act in 1993, and focus on the internal affairs of *construction trade unions*. Those amendments do not foreclose a sensible restructuring of such unions to meet the collective bargaining challenges that they face. Construction trade unions are not frozen in the form that existed at the time that the statute was amended. Nor do local minorities have a statutory veto over trade union reorganization. On the other hand, the Bill 80 amendments do require a parent union to have "just cause" for any proposed changes, and prevent a parent union from

> using its institutional or constitutional clout to penalize Local unions that question the parent's authority, or seek to preserve their local autonomy.
>
> 9. The Board's job, therefore, is to balance these competing factional and institutional concerns, within the framework provided by the statute.
>
> 10. On the surface, Bill 80 appears to be about internal union affairs. But as this case illustrates, there may also be an impact on the allocation of work opportunities, as between groupings of union members. Moreover, employers may have an interest in these issues as well, because under the existing collective bargaining regime, employers are typically obliged to deal with whatever local union has jurisdiction in the geographic area in which the employer is operating. There is a province-wide scheme of ICI collective bargaining and there are often extended-area agreements in other sectors as well; but quite a bit of business is still carried on between individual companies and local unions – however those local unions are structured or restructured from time to time. So employers have an interest in the clear identification of the union entity with which they must interact.

49. There is certainly nothing wrong with a union that is prepared to listen to the complaints and issues of the employers with which it bargains. It is not evidence of bad faith to do anything other than take an uncompromising stance rejecting each and every demand and complaint of the employers with whom the union deals, even in circumstances where a parent union considers internal structural change to the union.

50. In response to questions in cross-examination Mr. Flemming said that when some of the contractors told him that they were not bothering to bid on large jobs in the area of the two Local Unions, he felt the need to investigate and respond. He also testified to his unsuccessful attempt to persuade one contractor, OZZ Electric, to bid on the Royal Victoria Hospital Project in Barrie. Not only is there nothing wrong with doing that, he was correct in doing so. As Mr. Flemming said, if contractors do not bid the work they do not get it. If they do not get it no member of the union will be working for them on the job. After all, the two largest hospital projects in the recent past in Simcoe and Muskoka (the Royal Victoria and Parry Sound Hospitals) were performed by non-union forces.

51. He testified that he did not regard responding to complaints by contractors as simply placating them. If they presented what he thought was a legitimate issue, or their complaint was indicative of a greater problem, then it was up to him to address that greater problem. The important question for him was whether the problem was a problem for the IBEW, not for contractors. When it was suggested to him in cross-examination that he had given in to a demand from contractors for greater mobility, he responded "it's not about placating them, it's about market share". He denied he was looking for anything from the Toronto contractors in response to the decision to merge the Local Unions with Local 353. Similarly he responded at another point that the Local Unions "thought that this was about greater mobility. It is not. It is about increasing the market share and increasing the numbers in the two jurisdictions [of Locals 894 and 1739]. It's hard to be three jurisdictions and do it together. [Without a merger] things would be the same."

52. His actions and his evidence given in the stand indicate that he did not simply do as contractors asked him to do. He looked at his own "rule of thumb" ratio measurement. It is a rule that he described as merely a rough guide. It assumes that the need for electricians in any

given area is relatively constant, such that there should be an average of 2.5 electricians for each thousand persons in a given geographic area. A union that represented every single electrician in the area would have a ratio of 2.5 electricians per thousand population. This is an unrealistic objective, of course, but the size of the ratio is a rough guide. He said that he reviewed the ratio of the three local unions and noticed a large difference between Local 353 and the other two Local Unions.

53. While Mr. Flemming was not asked what those figures were, Mr. O'Grady in his report had done a quick calculation based on census data and membership evidence received from the three unions. While this is not very precise even as a rule of thumb since he used 2006 Census data and 2008 membership data, the ratios he arrived at were 1.6 for Local 353 and 0.51 for each of the two Local Unions.

54. Mr. Flemming did not act on the basis of the difference in ratios and contractor complaints. He took the further step of seeking an outside study to determine whether or not the complaints of contractors and the conclusion his rule of thumb yielded were correct.

55. The Local Unions spent much time in cross-examination and in argument asserting or attempting to prove that the entire process was merely giving in to contractors with no mutual benefit in return. I accept that the complaints of contractors played a large role in the genesis of Mr. Flemming's decision to undertake an examination of the state of affairs among these Local Unions. As noted, I do not accept the argument that there is something wrong with that. Whether Mr. Flemming was ultimately correct or not is a different matter, but responding to and assessing the validity of complaints and reviewing the performance of local unions is hardly an act that demonstrates a lack of just cause or of good faith.

56. Mr. Flemming retained Mr. Tim Armstrong, an independent expert in the field of labour relations to study the issues that concerned him. The Local Unions took an ambivalent attitude towards Mr. Armstrong. Initially their position was that he had been hired simply to justify a decision already taken by the International Union. During the argument about whether or not he could be called as a witness, the Local Unions described him as a respected and honest individual who came to the wrong conclusion based on the allegedly limited data he had before him. All this is beside the point. Mr. Armstrong did not make the decision; he made a recommendation. That was based on certain factual conclusions which Mr. Flemming accepted. Whether or not the factual conclusions stand up to analysis is the subject of a later part of this decision. Whether the facts support the reasons, and whether the reasons behind Mr. Flemming's decision are valid, is a matter of argument.

57. In fact, the Local Unions themselves raised a concern about Mr. Armstrong's impartiality with him at their first meeting. At their suggestion he retained Mr. O'Grady to compile the statistical data so that there would be no question of bias. As Mr. Armstrong says in his report at paragraphs 44 and 45:

> At the initial meeting in Mr. Pender's office on July 6, 2009, the suggestion was made by both Mr. Pender and Mr. Gillette, with no disagreement from Mr. Leduc, that Mr. John O'Grady of Prism Economics, a highly-respected economist with very extensive experience in construction industry analyses, be retained, as Mr. Gillett put it, to ensure that the information and the data collected were both accurate and independently analyzed. I communicated

> this request to Vice-Pres. Flemming and in due course obtained his consent to secure Mr. O'Grady's agreement to perform this data collection and analysis function.
>
> In meetings with Mr. O'Grady to describe the initial requests that I had made it to the Local unions for information, we refined and augmented the detailed requirements, and a letter from Mr. O'Grady to the three business managers was finalized. ...

There was no factual dispute about this recitation of events.

58. The Local Unions alleged that Mr. Flemming retained Mr. Armstrong because he perceived Mr. Armstrong generally to be in favour of the amalgamation of local unions and larger scale union structures. That may be. Mr. Armstrong himself says that in light of his experience in preparing reports for the United Association (in the Toronto area) and for the Carpenters' Union (over the entire Province) he had come to believe that consolidation of local unions and a larger scale union organization were generally a good thing. He came to that conclusion in this case as well.

59. There is nothing wrong with seeking advice from an expert whose views generally correspond to one's own. A recommendation for merger from someone known to be hostile to any change of any sort in any union structure would certainly be more significant, but it does not mean that this is the only sort of expert opinion with any weight. In the end the question is whether the factual analysis stands up.

60. What is more significant is the fact that the Local Unions were given all of Mr. O'Grady's data for analysis. The reports of Mr. Mackenzie and Strategic Insights are filled with criticism of Mr. O'Grady's approach and Mr. Armstrong's conclusions, and about the uses that can be made generally of the data. Neither presents any sort of analysis to suggest that the current structure is strategically best for the IBEW, or that it produces a greater benefit for anyone other than the members of the two Local Unions. Their "reply" to Mr. Armstrong and Mr. O'Grady is simply an assertion of the benefit of the current structure to members of the two Local Unions. They did not attempt to suggest a contrary view over the wider scope of the entire union. There is nothing wrong with putting forward the case of the benefits of the current structure to the two Local Unions. Indeed Mr. Flemming would have been well advised to pay more attention to them when the time came to making a decision. However the fact remains that the two Local Unions made no attempt to produce a better or contrary report to that of Mr. Armstrong about the Union as a whole (or that part of it that is represented by the 3 local unions) in the 21 months between the filing of these applications and the commencement of the oral evidence.

61. The Local Unions also spent some time attempting to demonstrate that the merger was in Mr. Flemming's mind when he retained Mr. Armstrong. That is not disputed. Mr. Flemming said that the word merger "may have been used" in his discussions with Mr. Armstrong, which is a rather striking understatement on his part. It was certainly part of the demands and complaints of Toronto contractors to Mr. Flemming. This was or should have been no particular surprise to the Local Unions. Mr. Leduc said in his evidence that nothing was ever said about merger in the discussions with Mr. Flemming and Mr. Armstrong but that he suspected it was on the agenda. Mr. Leduc testified that he had a conversation in 2007 with Mr. Flemming in which

Mr. Flemming asked him to consider a voluntary merger with Local 353. He did not give the context but it was not likely a passing fancy. In fact Mr. Armstrong's first letter to the three local unions, (attached to Mr. Flemming's letter of June 24, 2009) and indeed filed by the applicants with their applications lists a large number of areas for discussion including:

> Would greater access to name-hiring and expanded mobility rights increase the volume of work and/or the competitiveness of organized contractors and contribute to the growth in union membership and employment? If so, how could this best be achieved (e.g., through restructuring, amendments to the collective agreement, etc.?)

That idea did not come out of the blue, but surely there are no forbidden areas of thought for a local trade union or for an International Vice President.

62. In addition to the statistical analysis compiled by Mr. Armstrong and Mr. O'Grady, Mr. Flemming relied on his sense of the different "cultures" of the three local unions, discussed further below. This is a more qualitative judgment, based in part on the Armstrong Report but primarily on his own observations.

63. Finally, the Local Unions submitted that the International President of the IBEW, Mr. Ed Hill, ought to have been required to testify and indeed offered to call to him as their own witness. Pursuant to the IBEW Constitution, any decision to merge local unions must be made by the International President. I declined to hear oral evidence from Mr. Hill as the evidence would not be material. It is evident that the entire process was undertaken at the insistence and desire of Mr. Flemming. It was he who heard the complaints of contractors and performed his own analysis of union membership ratios. It was he who decided to retain Mr. Armstrong to examine the state of the three local unions. He persuaded Mr. Hill to pay for the report, and for Mr. O'Grady's additional reports. It is he who recommended that the merger take place. Before Mr. Hill would approve the merger he requested Mr. Armstrong and Mr. Flemming to fly to Washington to put their case to him. The decision he made could only have been a reflection of Mr. Flemming's recommendations and conclusions. Mr. Flemming was of course in the stand and was cross-examined at great length.

64. Had the Local Unions had the opportunity to examine or cross-examine Mr. Hill I have no doubt that they would have been able to demonstrate that Mr. Hill had a less exact or detailed knowledge of the situation than Mr. Flemming. That is usually the case when the titular decision maker relies on the judgment of someone who is the effective decision maker. The motives of Mr. Flemming are not really in dispute, although the colourization attached to them by the Local Unions is different. Finally, it is always theoretically possible that the Local Unions might have discovered some hidden agenda that they had not even guessed at before. The purpose of oral evidence is to prove facts alleged, not to engage in a fishing expedition through uncharted waters.

### *Evidentiary Issues*

65. There were two issues that arose during the cross-examination of Mr. Flemming, the first about raising a new issue in the case and the second about the production of a document.

66. In the cross-examination of Mr. Flemming, the Local Unions established that there were annual reports of membership for all local unions in Canada and the United States (although the form of the document was different in the United States for statutory purposes), and perhaps the "rule of thumb" ratio of membership to general population, for each year up to 2008. The Local Unions sought production of those documents. I refused the production for two reasons. First the request would lead to unreasonable delay. The documents were not in the hearing room and could not be obtained at a moment's notice. To seek them on the second day of cross-examination would cause a delay in the proceedings. Delay is always a serious consideration, particularly in an application under section 147 and 149. As the Board said in *Labourers' International Union of North America*, cited above:

> 11. In this context, it is quite important that "Bill 80 cases" be resolved expeditiously, so as not to interfere with ongoing collective bargaining needs – particularly in an environment in which economic activity and employment are transitory (i.e. employers and employees move from job to job or area to area in accordance with the vagaries of the marketplace). Indeed, the very structure of section 147 suggests that complaints which cite that section be resolved quickly, because section 147(5) undoes the organizational changes under review, until the Board has had an opportunity to consider the challenge – regardless of the ultimate merits of that challenge. In other words, the mere filing of a complaint prevents or reverses the organizational changes or actions initiated by the parent union, even if it ultimately turns out that they were entirely justified; and given the fluidity of the construction industry, it is not at all clear that the Board can (or should) redress the consequences of a challenge that turns out to be unfounded. Accordingly, it is desirable for the Board to deal with Bill 80 complaints as expeditiously as its resources permit.

67. More importantly, the basis of comparison of the performance and market share of local unions had been, up to that point in the case, focused exclusively on the three local unions in question. It is not appropriate to seek production of documents irrelevant to the case pleaded in an attempt to prove a new and different basis of comparison that had not been alluded to in any way before. Mr. Flemming was in cross-examination and would have had difficulty responding to what is in fact a new issue. He would be limited if not prohibited from speaking to counsel about what other facts and other documents might be relevant. It was simply not appropriate to add a new issue at that time.

68. Towards the end of cross-examination, the Local Unions sought to introduce a document and asked Mr. Flemming to confirm its contents. I did not see the document but was advised that it was a statement of union membership levels in all local unions in Ontario. I do not know if it referred to more than one year. I ruled this was similar to the production sought earlier and that the end of the third day of cross-examination was not the time to raise a completely new issue. Counsel for both Local Unions demanded to know "right now, on the record, when was the last time I ought to have been able to raise this". I replied that I did not need to identify that time since it was too late at this point and that was all that was necessary to decide to make a ruling.

69. The final issue is more difficult to deal with. During the cross-examination of Mr. Flemming, the Local Unions asked about communication between Mr. Flemming and Mr. Hill, the International President, before the merger decision. Mr. Flemming testified that he had produced a written report to Mr. Hill which was part of his presentation to Mr. Hill seeking

his approval of the merger. This is part of the presentation he made with Mr. Armstrong when they attended in Washington. The Local Unions requested an order that the document be produced.

70. One of my concerns was the potential for delay. The Local Unions argued that they had previously sought production of such documents (without, of course, knowing what might actually exist) and that I had refused. I did not agree with this submission at the time it was made during cross-examination and I continue to be of that view. Counsel's letter of March 28, 2011 (to which he referred in argument) begins its list of requests with the phrase:

> All documents respecting the relationship between T. E. Armstrong and/or J. O'Grady or their respective consultancies *on the one hand* and the IBEW its officers, counsel and representatives *on the other*…
>
> [emphasis added]

71. This request did not seek production, in my view, of documents internal to the International Union. Rather it sought production of the communications between the International Union on the one hand and Mr. Armstrong and Mr. O'Grady on the other. If I am wrong about that, it was certainly what I said at the time. In the decision of April 28, 2011 I said:

> The retainer
>
> 6. The Local Unions ask for production of "All documents of any kind respecting the relationship between T. E. Armstrong and/or J. O'Grady… and the IBEW and its officers that resulted in the Armstrong Report, including…". These documents are not arguably relevant. The Local Unions have alleged bias but have provided no real particulars of it.
>
> 7. The only suggestion of a basis for the assertion is the comment that TEAC has produced reports for other international unions that have recommended or been the basis of a recommendation that locals be merged. To attack a report by looking at the consultant's other clients proves nothing, any more than comments about what types of clients a lawyer represents provides any comment about the lawyer. Members of the criminal bar are quick to point out that no such inference can be legitimately drawn.
>
> 8. In the end, the report stands or falls on its own merits. The Armstrong Report suggests that the field of social psychology has identified certain characteristic responses to change or the prospect of major change: see paragraphs 35 to 38. It is also true that those who are retained to look for something will focus on that issue, and that such a focus may distort the final picture. The question is whether the result was an accurate and complete reflection of the reality that TEAC set out to examine. That depends on the evidence the Local Unions wish to present, not on the initial retainer. The documents sought are not arguably relevant to an issue pleaded in the applications.

72. No reconsideration of the decision was sought. The Local Unions did not at that time assert that I had misunderstood this request or read it too narrowly, nor did they attempt to redefine the request exclusively to matters internal to the International Union.

73. There is no question that the Local Unions did not know of the existence of this document before Mr. Flemming described it in his evidence. It would be difficult to describe it as a surprise however. Counsel was asking reasonably straightforward questions about what might or might not exist, in the manner that one would start examination for discovery. There is, of course, no process of examination of witnesses for discovery. There is however an extensive process of discovery of documents, and these proceedings were adjourned once because the documents were not produced in a timely fashion.

74. However, I found this request for the report troubling. Contrary to the argument of the International Union, the document is relevant, whether or not it is probative of anything. I declined to order production for two reasons.

75. First, the document could have been and should have been sought previously. Regardless of what anyone concluded before that time, in the March 23, 2011 decision I stated that the hearing was not going to "go off the rails" again. That, combined with all of the earlier decisions, ought to have indicated to the parties that it was now time to focus what they wished to include and what they expected to see in their case, including any other documents that might exist for which production might be sought. It was certainly not an invitation to wait until cross-examination to turn their minds to what else might exist and to ask for them at that point.

76. That by itself might not have been a reason to refuse production, however. The question is also to what end the document might be put. The Local Unions sought to demonstrate that Mr. Flemming was motivated by the complaints from large Toronto contractors and that he had merger in mind before he even retained Mr. Armstrong. By that point in his cross-examination, these issues were not really in dispute. A document that would only prove what was already evident was not material to the decision the Board was required to make.

77. The only other potential significance of the document is that it might have disclosed some heretofore unidentified and unsuspected motive on the part of the International Union. There is no reason to expect that this is at all likely. It is merely possible. Accordingly, the request was only material if the Board was prepared to permit the Local Unions to engage in a rambling and unfocused search during cross-examination for some other case other than the one which they had pleaded. I declined to do so.

**The Armstrong Report**

78. Much was made of the Armstrong Report by both the International Union and the Local Unions, and particularly the process by which Mr. Armstrong gathered information and how it was analyzed. In my view this was somewhat misplaced on both sides.

79. The Local Unions reviewed the process by which Mr. Armstrong and Mr. O'Grady gathered information and attempted to demonstrate that the process failed to meet some of the rules of natural justice for statutory tribunals. This is not particularly helpful. Mr. Armstrong was not a statutory or consensual tribunal, nor was he making a decision. He was retained to prepare a report for the International Union which he delivered to the International Union for its own purposes. He owed no statutory or contractual duty to any of the local unions involved. It is evident that if the process were one that resulted in a situation where he did not gather all the relevant evidence or reviewed incorrect or misleadingly incomplete evidence, his findings and recommendations would be of less value. Logically any decision made on the basis of those

findings and recommendations would be commensurately less defensible. As will be seen below, the findings compiled by Mr. Armstrong and Mr. O'Grady did not, in my view, suffer from the defects alleged by the Local Unions. To the extent that he draws certain factual or statistical conclusions, they are as reliable as such information can be.

80. The recommendations are based on a wider range of information than simply the statistical data and involved both deductive analysis and the application of Mr. Armstrong's judgement. The Local Unions conceded that on the basis of the information available to him, Mr. Armstrong's recommendations made some sense. In seeking to call Mr. Armstrong as a witness the Local Unions wanted to add to the information that he had and to dispute the conclusions to which he had come. Again, this goes to the value of his Report, which is a matter for the Board to weigh rather than for Mr. Armstrong to reconsider.

81. The International Union in argument placed, in my view, an excessive reliance on the recommendations made in the Report. Mr. Armstrong did not make the decision; the initiative to commence the investigation and the effective recommendation to President Ed Hill came from Mr. Phil Flemming. Ultimately the decision represents his conclusions about what needed to be done. What value he placed on the Report, and what he thought about the information and recommendations made by Mr. Armstrong, as well as Mr. Flemming's final decision, are what the Board will scrutinize.

*Mr. Armstrong's Findings*

82. Mr. Armstrong made both factual findings and recommendations based on those findings. The recommendations are discussed in greater detail below. However Mr. Armstrong does state at paragraph 54: "My recommendations, Section XV, are based on the findings set out in this section [section XIV]." Generally his findings were:

1. He drew no conclusions about the performance of any Local Union despite anecdotal evidence from certain contractors. He concluded that all three locals were making their best efforts with the resources that they had.

2. Membership growth was significantly greater in Local 353 than in the Local Unions.

3. The addresses of the members of the three local unions indicated that there were more members of the International Brotherhood of Electrical Workers living in the geographic area of the two Local Unions who were members of Local 353 than were members of the two Local Unions.

4. The market share of the two Local Unions was dwarfed by non-union contractors' share and was significantly less than CLAC contractors in significant areas of the economy.

5. Local 353's market share outperformed the other two, even taking into account the effect of the subcontracting obligations of a number of general contractors in Board Area 8.

> 6. Organizing and the use of stabilization funds to obtain work has led to a greater market share in Local 353's area than in the other two, despite the best efforts of Local 894 in organizing and the use of stabilization funds.

83. Based on these findings he concluded that the IBEW had a "competitive crisis" in competing with CLAC and non-union forces in the area of the two Local Unions, despite best efforts of both the Local Unions. For the reasons he sets out in his report, merger of the three local unions was the appropriate solution that he saw, although he does not address the details of how it should be done (see paragraph 86 of the Report).

84. The Local Unions dispute all of the statistical findings, which are based on the conclusions drawn in Mr. O'Grady's appendices to Mr. Armstrong's report, and the conclusions drawn from them. It is necessary to address each one.

*Expert Reports*

85. The Armstrong Report contained a number of appendices that were statistical analyses created by Mr. John O'Grady, of John O'Grady Consulting Ltd. Locals 1739 and 894 filed a number of expert reports in response to that statistical analysis. Two of them were prepared by Hugh Mackenzie and Associates. Both Mr. Mackenzie and Mr. O'Grady are widely recognized experts, both in the field of academic publications and practical consulting work that involves the use of statistical analysis. Both the Local Unions and the International Union referred extensively to the comments made by each of them in their various reports. I accepted those reports as reports of experts and will refer to them in detail in this decision.

86. Local 894 also filed a number of reports from a company named Strategic Insights Inc. In all of their reports the only description of the expertise of this company (but not the individuals who created these reports) is contained in a copy of a PowerPoint presentation which lists them as follows:

> A consulting firm that has steered between $5 million to $250 million in new opportunities to our clients in the energy and infrastructure sectors
>
> High-level government and industry connections in Ontario in the energy and infrastructure sectors
>
> Experience, tools and resources to:
> - conduct performance evaluations, market analysis and competitive intelligence
> - assist companies and unions achieve their objectives

87. It lists as the advantages of working with Strategic Insight as:

> - The Trust Factor:
>
>   key government players and executives of energy, infrastructure and manufacturing companies know and trust Insight's expertise and pay attention to our advice.

- We're Already Plugged In:
  SI has a strong knowledge of the current state of play of Ontario energy and infrastructure issues. We know what perspectives will influence companies and governments.
- Skills Expertise in Analysis:
  trained in market/competitive analysis by ex-CIA officers.

88. Beyond this there is no particular explanation of any expertise in terms of academic or practical work. One does not like to be impolite about reports received from a party that obviously finds the reports of value and has spent some time preparing. However, the purpose of a report from a third party is not to provide another means of putting forward a party's case. If the party held forth as an expert witness has no expertise, its comments are simply those of any third-party observer.

89. Much of the content of the first two reports from Strategic Insight repeated the evidence given by Mr. Gillett in the stand, or made submissions that were made, and frankly were made much better, by counsel for Local 894. For example it made a number of submissions with respect to a lack of "Due Process" on the part of the International Union. Strategic Insights does not claim to have any legal expertise as a basis for making their submissions.

90. Strategic Insights attempted a number of statistical analyses, particularly in its second report (the "Final" report dated October 14, 2010) which I found to be of no value at all for the reasons set out in Mr. O'Grady's response dated January 8, 2011. With all due respect, the continuing series of reports from Strategic Insights after that date (January 24, 2011, March 10, 2011 and July 14, 2011) and Mr. O'Grady's response to them dated June 28, 2011 demonstrate the wisdom of providing counsel involved in arguing a case before the Board only one right of reply each.

91. I am sure that Local 894 found the Strategic Insight Reports to be of value in formulating and focussing their case. They are not, however, submissions on which I can place any weight.

*Membership Growth*

92. The numbers here are not in dispute since they were provided by the local unions themselves. The only criticism of Mr. O'Grady's conclusions was that the time periods during which the three local unions were compared was different, presumably because of the data supplied. That is easily remedied by looking at all three local unions for the same time period. The Local Unions pointed out that to do that would not examine the membership changes in Local 353 during the early part of the decade when there was a recession. If Local 353's membership had declined during the recession, that would simply make its subsequent rise even more impressive, so it does not strike me that this criticism is particularly helpful.

93. Of course, Mr. O'Grady did not base his statistical analysis and recommendations on a comparison of identical time periods, and hence the figures below were never provided to Mr. Armstrong or Mr. Flemming. However the figures obtained by comparing identical time periods are either identical to the results to which Mr. O'Grady came or put Local 894 in a worse light. The figures for 2004 to 2009 are:

| Local Union | 2004 | 2009 | % change | O'Grady's numbers |
|---|---|---|---|---|
| 1739 | 209 | 246 | +17.7% | +17.7% |
| 894 | 569 | 532 | - 6.5% | +22.8% |
| 353 | 6,234 | 8,482 | + 36.1% | +36.1% |

94. Mr. O'Grady and Mr. Armstrong compared those figures with the population growth in the areas. In the case of Local 1739 they concluded that growth in membership had not kept pace with the general population growth. Membership in Local 353 had grown 36.1% over five years compared to an annual population growth of 2.0%. No comparison was done for Local 894 although Mr. Armstrong noted that the membership had declined over the previous 4½ years. In summary, only Local 353 was maintaining a growth of members that corresponded to the growth of the population (and hence the need for electrical services) in their area.

95. One other area was analysed which is also a measure of the "health" of the local unions, that is the number of hours worked by those members over a 5 year period. Local 1739 shows an increase, although the figures obtained from the IBEW-CCO (based on their remittances) is higher than the figures provided by Local 1739. Those hours increased either from 239,000 to 405,475 (IBEW-CCO) or from 284,384 to 351,837 (Local 1739). In either case this was an increase in "hours per member" on an increasing membership base. The increase is greater than could be accounted for by an increased membership. Local 1739 did not offer any explanation as to why their figures differ from the IBEW-CCO. Local 894 suffered a decline in both members and hours worked from 2004 to 2008, although the low point was 2006. Local 353 showed, as indicated above, a membership growth of 36.1%, far in excess of population growth, and an increase in hours of 40.6%.

96. Mr. O'Grady's conclusion about the Local 353 figures was that "a sustained increase in both hours of employment and membership of this order of magnitude can only occur when market share is being gained." The same cannot be said for Local 894. Local 1739's growth has not kept pace with the population growth and the figures are unclear. It may be that this measurement demonstrates an increase in market share, although the final results of that market share are, as will be seen below, pallid at best.

97. Mr. O'Grady also quantified the "membership per thousand population" to derive the "rule of thumb" that Mr. Flemming had used. Describing his figures as an approximation, again based on figures that do not match in terms of time he concluded that the ratio of members to thousand persons of population was as follows:

| | |
|---|---|
| Local 1739 | 0.51 |
| Local 834 | 0.51 |
| Local 353 | 1.61 |

98. That is, the ratio of Local 353 members to the general population in its area was three times as high as that of the other two local unions. However, Mr. O'Grady made no attempt to relate those ratios to the performance of the three local unions, presumably since he, like Mr. Flemming, considered that the ratio did not point to a single answer.

99. Mr. O'Grady made one finding that Mr. Armstrong relied on excessively. He compiled the figures for the number of times members of Local 1739 had travelled out of the local area for work purposes over the course of three, 3-year collective agreements. He concluded that during the 2007- 2009 period one third of the Local's membership had travelled outside the area of Local 1739 for the purposes of employment. He suggested that there might be a number of explanations for these figures, one of which was that the high proportion of travellers could raise questions about the Local's sustainability. He also offered a number of other explanations. Mr. Armstrong referred to that statistic at paragraph 84 of his Report, suggesting that it indicated an inadequate supply of work opportunities in the Local's area, and commented that travelling was not a useful growth strategy. Before one could draw any firm conclusions about the significance of travellers from Local 1739, one would need to know how often the members travelled and for what period of time. One would also need to know the corresponding statistics for members of Local 353, particularly since it is their mobility that some Toronto contractors are most concerned about.

*Organizing*

100. This factor was not analysed particularly precisely. Mr. O'Grady notes that from May 2001 to July 31, 2009, Local 1739 was able to make only four applications for certification (all for the same employer) and only one resulted in a certificate. Mr. Armstrong recorded that Local 1739 had told him it had executed 23 Voluntary Recognition Agreement during the same time frame.

101. There are no statistics for Local 894. Mr. Armstrong simply says:

> …I am satisfied on the basis of the material supplied directly to me by Local 894 as well as conclusions reached by O'Grady, that the Local is expending substantial efforts on organizing. Limitations on efforts in this regard relate to the fact that its revenues permit the engagement of only one organizer.

Local 894 did not provide the Board with whatever data it may have given to Mr. Armstrong nor did it provide any data at the consultation as to any results of organizing efforts it had undertaken. Mr. Armstrong's statement may simply be the result of Mr. Gillett's conversations with Mr. Armstrong. Mr. Gillett said that in response to that comment Local 894 hired another organizer, not because they expected the presence of another organizer to produce any result but because they wanted to show that they could afford to do so. His evidence was that the hiring of an organizer produced no results, which he blamed on the desire of the International Union to merge Local 894 with Local 353.

102. Mr. Armstrong found that Local 353 was in a different category. He said at p. 41:

> [Mr. O'Grady] concludes that the vast majority of IBEW contractors in Ontario are resident contractors within Local 353's jurisdiction. From his description of Local 353's organizing activities he concludes that the preponderance of IBEW organizing in Ontario is done by Local 353.

Again this appears to be a reference to information supplied verbally rather than a statistical analysis. The only other evidence is that of Mr. Gillett who agreed that Local 353 had 9 organizers on staff, but did not think that more than 4 or 5 of them did real organizing work.

*Members' Place of Residence*

103. Mr. O'Grady came to certain conclusions about where the members of the three Local Unions lived. The figures are not disputed and are as follows:

IBEW Membership
Local 894, and Local 353 Living in Local 894's Geographic Jurisdiction

| | |
|---|---|
| No. of Members in Local 894 (2008) | 528 |
| No. of Local 894 Members living Local 894's Geographic Jurisdiction | 501 |
| No. of Local 894 Members living Local 353's Geographic Jurisdiction | 6 |
| No. of Local 894 Members living Local 1739's Geographic Jurisdiction | 1 |
| No. of Local 894 Members living in other Locals' Geographic Jurisdiction | 20 |

| | |
|---|---|
| No. of Local 353 Members living Local 894's Geographic Jurisdiction (ICI) | 1,133 |
| No. of Local 353 Members living Local 894's Geographic Jurisdiction (other than ICI) | 270 |
| Total No. of IBEW Members living Local 894's Geographic Jurisdiction | 1,914 |

IBEW Membership in Local 1739's Geographic Jurisdiction

| | |
|---|---|
| Members of Local 1739 living in Local 353's geographical jurisdiction | 2 |
| Members of Local 1739 living in Local 894's geographical jurisdiction | 3 |
| Members of Local 1739 living in another Local's geographical jurisdiction | 12 |

| | |
|---|---|
| No. of Members of Local 1739 living in Local 1739's geographical jurisdiction | 229 |
| No. of Members of Local 353 living in Local 1739's geographical jurisdiction (ICI) | 342 |
| No. of Members of Local 353 living in Local 1739's geographical jurisdiction (other) | 111 |
| No. of IBEW Members of 1739 and 353 living in Local 1739's geographical jurisdiction | 682 |

104. The issue is what significance this fact has. Mr. Armstrong and Mr. O'Grady's conclusion, upon which the International Union relies, concluded that most members of the IBEW living in the geographic areas of the two Local Unions have chosen to seek work in and through Local 353, not in and through the local unions that have jurisdiction over the areas in which they live. That is, the International Union asks the Board to conclude that the members do not see an employment benefit in seeking work through their home local.

105. Mr. Mackenzie comments:

> The relationship between a member's residence and jurisdictional boundaries is completely irrelevant to the issue at hand, since jurisdictional boundaries are based on the location of the work, not the residence of the members. As far as the integrated labour market point is concerned, even if the point is conceded, is still to be demonstrated that a single local can function better in any greater labour market than three locals.

106. I am not sure what this means other than that the members of the IBEW living in the geographic area of the two Local Unions see greater work opportunities through Local 353, despite the fact that such work will often be at a greater distance from home to work for a member of the Local Unions. To some extent, as the Local Unions suggest, residence patterns may be explained by the cost of housing in Toronto. However the borders of Local 353 covered the entire Regional Municipalities of York and Peel and part of Halton Region (Halton Hills and part of Milton). It is those communities to which those who cannot afford the cost of housing in

Toronto migrate. The explanation that housing costs are responsible for this pattern may have some validity in Durham just beyond the borders of the City of Toronto. The precise locations of the residences of members of Local 353 living in the geographic jurisdiction of Local 894 were neither produced by Local 353 nor sought by the Local Unions. The explanation about housing costs was one advanced by Local 894, but is no more than a hypothetical possibility, and one that is unlikely except in one instance.

107. In a different context, the Local Unions put it more exactly. The Local Unions asserted that the fact that members of Local 353 live the geographic areas of the two Local Unions did not create labour relations problems. IBEW members were clearly able to choose which local union they preferred and did so freely. Those who prefer to seek work through Local 353 have, as the Local Unions put it, voted with their feet (or more exactly with their cars). I agree. I would use the same phrase to describe the decision being made by these members. A majority of the IBEW members living in the geographic areas of the two Local Unions have concluded that they are better off economically in a distant local union other than the local union in whose jurisdiction they live. If one is to look to the membership as a source of information about the value of the two Local Unions in the area of providing job opportunities, the membership has spoken loudly and clearly.

108. This is significant given the organization of the IBEW. The 13 local unions that are parties to the Principal Collective Agreement are defined by geographic jurisdiction. They are not defined by sector or by the employees of a particular employer or utility, nor by a type of work. It is the function of the local union to promote and protect the interests of its members. Since geographic location is the only defining element of the local union's jurisdiction within the IBEW, one would expect to see at least generally that union members living in a geographic area would be the members that the local union is serving. In this case, the Local Unions do not serve the interests of most of the IBEW members living in their geographic area. Those members have chosen to look elsewhere.

### *Market Share*

109. Market share was the most hotly contested analysis compiled by Mr. O'Grady. The analysis of the data that Mr. O'Grady consolidated and analyzed was criticized in reports from Mr. Hugh Mackenzie and from Strategic Insights. The Local Unions relied on Mr. Mackenzie's challenges to Mr. O'Grady's analysis as set out in his report. They made a much briefer reference to the six reports filed by Strategic Insights on behalf of Local 894.

110. In theory, the numbers to be arrived at involve very simple arithmetic. The task can be accomplished by assembling a list of all of the construction projects performed in a given area over a given time, determining which were performed by IBEW members and which by others and the ratio will demonstrate what percentage of the work each local union did. Addition and division are the only arithmetic operations that need to be used. However, the practical reality of obtaining those numbers is much more difficult. Obtaining data about all of the electrical work done in a year, and knowing the union or non-union affiliation of each contractor that worked on the project is difficult. The accuracy of the list of projects and the correctness of the identification of the union affiliation of persons who worked at the job, are major challenges.

111. The second question, assuming one arrives at a ratio that has some acceptable degree of accuracy, is what does it mean and why? Analysis, the conclusion about what the figures

demonstrate, and what could be done to alter the patterns shown, is different from the task of assembling the data. Determining the cause of the present and making a prediction about the future is less precise, although we all do that every day of our lives. The difficulty with the reports of Mr. Hugh Mackenzie and some of the argument by all parties, was a failure to distinguish between the two.

1. How the data was assembled

112. Data with respect to construction activity in the area of the three local unions was collected from a database called Reed Construction Data. That is a very large, but by no means complete, list of construction projects in given geographic areas over particular times. These lists were then sent to each of the three local unions requesting them to do two things. First they were to "code" the projects of which they were aware in accordance with a standardized group of categories. These included IBEW resident Contractor; IBEW non-resident Contractor; non-union contractor; CLAC contractor; CUSW contractor; and CEP contractor. The 3 local unions were also asked to indicate if the project was incorrectly listed because the electrical work was not yet tendered; or there was no electrical work on the project; or it was not in the geographic area of the local union; or it was not covered by the Principal Agreement. The local unions were also asked to add any construction work of which they were aware which had not been recorded by Reed Data.

113. Mr. O'Grady did not suggest that the data produced results that reflected the exact market share of the three local unions. He produced charts for all three locals that showed the results from only the Reed Data plus the results from the Reed Data and the local unions' additions to the lists. He noted several times that the Reed Data did not track industrial projects reliably, and hence he had to add to the list of projects from Reed Data a second list compiled by the International Union. Finally Mr. O'Grady asked the Local Unions and Local 353 to supplement that with any other projects of which they were aware. He also noted in the Local 894 appendix that the Reed Data material may have miscoded some of the institutional and commercial work, although Local 894 had reviewed the list and provided some information where it was able (it was not always able to do so).

114. Hence the data has some flaws, and cannot be regarded as precisely accurate. Where possible, Mr. O'Grady sought confirmation from other sources of data such as the Ontario Construction Secretariat (drawing on the data of the Electrical Safety Association), one of whose functions is to collect data about the unionized sector of the construction industry. Those figures would not produce precisely accurate market share figures either, but they were confirmatory in the sense that they revealed the same trends.

115. The Local Unions, basing their argument on the reports filed in response, argued that the entire exercise was flawed. They alleged that it was completely unreliable because (1) it did not reveal Mr. O'Grady's methodology, and (2) failed to explain the weaknesses and limits of what the data might reveal. I accept neither of the Local Unions' arguments.

116. First, Mr. Mackenzie did not say that Mr. O'Grady's work was of no value because he did not explain his methodology. The portion of his second report in reply to Mr. O'Grady on which the Local Unions rely most heavily states:

> It is evident from the report itself that the Reed Database is not complete, given the fact that the supplementary information added to the Reed Data added significantly both the number and value of the projects analyzed.
>
> It is not clear how the IBEW data [from the International Union] were collected, and therefore it is not possible to determine whether or not there was a systematic bias in the identification of projects from the IBEW lists that were missing from the Reed data.
>
> With respect to the two elements of the data assembly process that were in the hands of the locals, the material provided included the letter from Mr. O'Grady requesting that the locals review and code the projects in the Reed list according to a coding scheme proposed by Mr. O'Grady. *It is not clear from the material provided what methodology was used to comply with the request or whether or not the coding system was actually used.* What we do know is that none of the locals provided either annotated coding sheets or summary results for all of the code categories. No working papers were provided that would assist an outside observer in understanding how the information provided was interpreted for translation into the summary data provided in the report.
>
> [emphasis added]

That is, he is talking about the methodology used by the three local unions in providing additional data to Mr. O'Grady. Obviously the two Local Unions knew what they did. If they provided no "working papers" then they know why. Their suspicions about Local 353 are dealt with below.

117. The same criticism is found in Mr. Mackenzie's first report at p.4:

> These data were supplemented from two other sources: a list of major projects maintained by the IBEW at the international level; and information provided by each of the local unions themselves.
>
> The data come from different sources. There can be no assurance that the process of winnowing and combining the lists for the purpose of the analysis was conducted consistently and reliably. Indeed, it is evident from Reed's description of its own data and from the amount of work that the local unions were expected to do to adapt the data for the purpose it served in the Armstrong Report that the base data were ill-suited for that purpose.

This is all very well, but Mr. Mackenzie did not say that the data from the International Union was incorrect, simply that he had no confirmation that the lists had been assembled in a manner that could be called "consistent and reliable." Had Mr. Mackenzie or the Local Unions been able to demonstrate a single error or omission from the International Union's list, this argument might have had some significance.

118. The second criticism (a failure to explain weaknesses) is simply incorrect. As will be seen below, Mr. O'Grady indicated frequently when data was inexact or unreliable and provided summaries that reflected different types of data to see if there were different results or different trends revealed by different data.

### 2. The value of the data

119. In his response Mr. Mackenzie argued that there was "no good model" by which to measure union density or market share of a particular union. He said at page 3 of the first report:

> Eight years ago, one of the key recommendations of this major study was that the participants in the industry work together to develop a database and measurement tool that would enable the parties to measure reliably union density in the ICI construction industry in Ontario. To date, no such database and tool has been developed. Instead what we have in the current Armstrong report is a weak and incomplete dataset adapted from data sources that were not originally compiled for this purpose.

This argument is typical of much of the approach of the Local Unions. They asserted that the data assembled by Mr. O'Grady cannot be proof of anything because they do not meet the standard of the most rigorous academic models for statistical research. The fact that the real world produces different data from a controlled laboratory setting is true but does not lead to the conclusions that Mr. Mackenzie asserts. Indeed any attempt to gather data from sources other than a standard set of questions developed by statisticians and administered in a controlled environment will always have degrees of unreliability. That is no reason to write off the results as "completely useless". If that was the conclusion one wanted the Board to come to, surely it would be incumbent on the local unions to identify the data that was incorrect or how it would yield demonstrably false results. The position of the Local Unions appears to be that because the data and analysis were not perfect in a textbook sense, then it is impossible to know anything. On their view the only truly reliable information is from the business managers of the two Local Unions, who have an innate ability to know and understand everything that goes on within the geographic boundaries of their local union. I do not accept that proposition.

120. To be fair, Mr. Mackenzie does offer what he thinks might be a better way of determining the question of whether the merger of the three local unions can change the patterns identified by Mr. O'Grady. In his first report he says:

> The only way to isolate the role of union structure from other factors would be to compare the IBEW's union presence with that of other unions whose structures resemble that recommended in the report. There may be other factors related to other trades that would make such a comparison difficult to make, however, all things being equal a data showing that union density was higher in the 894 and 1739 areas relative to the 353 area in other construction sector unions that were structured the way the report recommends would suggest that to be the case. No such data were presented. Accordingly even taking the data presented on face value, they offer no insight as to how IBEW's presence in Southern Ontario might be affected by the structural change being considered.

121. This is an attractive idea. Had the Local Unions undertaken such a study, perhaps relying on the International Union of Operating Engineers who work under a single Province-wide local, it might (or might not) have challenged Mr. O'Grady's conclusion. The Local Unions did not. The fact that such a study *might* do so does not undermine Mr. O'Grady's analysis.

3. The Reliability of the Data used by Mr. O'Grady

122. There is no dispute about what data was used, simply its completeness and its reliability.

123. Mr. Mackenzie's challenge in his first report was:

> The data come from different sources. There can be no assurance that the process of winnowing and combining the lists for the purpose of the analysis was conducted consistently and reliably. Indeed, it is evident from Reed's description of its own data and from the amount of work that the local unions were expected to do to adapt the data for the purpose it served in the Armstrong Report that the base data were ill-suited for that purpose.
>
> The Reed Construction Data service is intended to notify participants in the construction industry of the status of projects put out for tender. It does not include jobs not put out to tender. In many cases it does not identify either the general contractor or the electrical contractor. Although there is no specific size threshold cited in Reed's material, it is apparent from a review of the projects in the database (and understandably, given the purpose for which the data are provided) the project coverage is more extensive for large projects than for smaller projects.
>
> The local unions were asked to review an extensive list of projects from the Reed database, code each project according to the scheme indicated and add to the list any projects of which the local unions were aware that were not on the list. This is not an easy task….
>
> In general, in order to be able to draw a statistically valid conclusion from a set of data, the data must have been assembled on a consistent basis that is can be replicated [sic]. The Reed data, as processed for use in the Armstrong Report, do not meet that standard. Accordingly it is impossible to draw statistically valid conclusions from the data.

124. It is not apparent to me whether the Local Unions are saying that they did not do their work very well or that they do not believe anything Local 353 claims. Certainly if there was something missing from their own work there was plenty of opportunity to remedy that shortcoming.

125. Mr. O'Grady's reply to that criticism was as follows:

> Mr. Mackenzie states that "The Reed Construction Data services is intended to notify participants in the construction industry of the status of projects put out for tender." In the first place, this is not strictly correct. If the project required a building permit, it is almost certain to have been included in the Reed Database. Second, it would be exceedingly rare for all components of a building project to be sole-sourced, though it is possible that some components might be sole sourced or performed directly by the general contractor. Third, as will be noted below we asked the Locals to add projects that were omitted from the project lists. In essence this would mean that adding projects sole-sourced to IBEW contractors but ignoring (for want of information) projects sole-sourced to non-IBEW contractors. In other words,

> if there was a bias it was to overestimate the share of the work performed by IBEW contractors. I should note that the IBEW-CCO subscribes to the Reed Construction Database and that I obtained a project lists by using their [the IBEW-CCO's] subscription to the database.

He then goes on to point out that his instructions to each of the three local unions were the same.

126. The objection of the Local Unions is that the data is not reliable or verifiable. The data was said not to be reliable because there was no systematic guarantee that the coding was done in a systematic or standard way since it was done by members of three local unions. That argument is very limited. While it is no doubt true that union officers and representatives may take a different approach to statistical analysis than undergraduate research assistants, the variables of information to be added to the list are extremely limited. The set of variables are not a difficult to apply. Was there electrical work on a project? If so, was the electrical work on a particular project done by IBEW, CLAC, non-union? The motivation of all three locals would have been at best identical: all three would wish to demonstrate that they had a high market share. There is no suggestion as to why Local 353 would be less interested or less diligent. After all, the Local Unions' position is that the business managers of these two Local Unions are fully informed about activity in their Local Unions' area and they did not suggest that there was any need to assume a different set of facts for Local 353.

127. In his first response, Mr. O'Grady noted that Mr. Mackenzie had referred to an additional study conducted by the Ontario Construction Secretariat about the distribution of Electrical Safety Authority permits between IBEW and non-IBEW contractors. He points out that he relied on the same study in his appendices as additional proof of the same patterns. He concludes finally:

> Mr. Mackenzie's report noted the OCS data but does not appear to take issue with the data or with the pattern that it reveals, though he offers his own explanation for that pattern. The picture painted by the OCS study is consistent with the picture painted by the analysis of Reed Data.

If the Local Unions are saying that the statistics were incomplete or erroneous, they would have been able to identify those errors by the time of the consultation.

### 4. Potential for Distortion

128. Whatever one might wish to say about the comparisons between the Local Unions and Local 353, the statistics for each local area are less likely to have inaccuracies that reflected negatively on the Local Unions. The Local Unions were given the Reed data and the International Union's list to create a list of projects. They were able to supplement the information by adding other projects not found on these two lists and by removing projects which had not gone ahead or work which did not contain any electrical component. Of the remaining projects they could identify those which have been performed by members of Locals 1739 and 894, and those who had been performed by non-union or CLAC contractors. If they were not familiar with a project listed on the Reed list of projects, they could have investigated it, if not by the time they were required to submit their results to Mr. O'Grady, then certainly by the time of the consultation. With respect to IBEW projects, there is no reason for any of the local unions not

to add a project on which their members worked. That information would have been easily within each local's knowledge.

129. The potential for distortion arises from projects of which they might not know, because the employees were represented by CLAC or were not represented by a union at all. It is likely, though not necessary, that such projects would be smaller in scope. However if such projects are missing from a list of projects, the only distorting effect would be to overstate the market share of the IBEW contractors over that of the non-union and the CLAC contractors. There is no evidence that would lead me to conclude that any such distortion was any greater or less for any of the three local unions involved.

130. Asked to confirm certain statistical conclusions made by Mr. O'Grady, Mr. Leduc dismissed them as being "all Reed data… and therefore inaccurate". That is certainly not a statement I accept about the summaries compiled by Mr. O'Grady. At the very least the data came as much from Local 1739 as it did from Reed Data.

5. Was the Data Verifiable?

131. The other complaint is that the information is not verifiable. That is, Local 353 might have, deliberately or otherwise, coded its information incorrectly. Although the two Local Unions have no members or presence in the Toronto area, Local 894 did produce six reports from Strategic Insights about the Armstrong report. Strategic Insights makes no claim to expertise in data analysis, economics, or the law although they were prepared to comment on all three areas. If, however, they are as they say, able to perform "market analysis and competitive intelligence" and that they have been "trained in market/competitive analysis by ex-CIA officers", presumably they could have devoted some of their analysis to identifying errors in Local 353's data.

132. Finally, Mr. Mackenzie says that the results of the data were not replicable. At page 5 of his first report he says:

> More specifically, in the course of this review, we attempted without success to replicate the findings of the Armstrong report. The IBEW provided the original request transmitted to the local unions, which included a proposed coding system for the Reed database list. The IBEW also provided a project list with report for Local 1739 showing the codes it requested as well as marginal clarifying notes. With respect to Local 894, the IBEW provided a copy of the Reed Construction Data list with hand-written annotations to some of the listed projects but with no reference to the request coding system. With respect to local 353, the IBEW provided computerized lists evidently prepared by the local, one showing union projects, one showing non-union projects and one showing projects not in the Reed database were added from other sources.
>
> A detailed consideration of Local 353's review of the first 50 pages of the Reed data provided to that local revealed that approximately 50% of the projects on the list were excluded from their analysis for one reason or another. These projects may have been omitted because the local believed they had been cancelled, because the local believed the projects did not include any electrical work or for some other unspecified reason.

> While it may be possible to replicate the union density percentages provided in the report from the Reed and other data following the same process as originally followed, it is not possible to replicate the results from the material provided. Thus the results cannot be tested and cannot be considered reliable.

133. Surely the question is not whether the representatives of Local 353 removed over half of the projects listed in the Reed Database reports. Obviously if the projects were never commenced or included no electrical work they should have been excluded. Locals 1739 and 894 were directed to do the same thing, and presumably did so. The question is not whether Local 353 removed projects from the list, but whether they were accurate in doing so. There is not one project identified as having been incorrectly removed from the list. In any event, if the sweep of the Reed Database is so wide that it captures a large number of projects that are irrelevant for this study, that fact reinforces its usefulness as the place to start.

134. Mr. O'Grady responded:

> I confirm that all materials gathered in the course of preparing the appendices to the Armstrong Report were collected and turned over to counsel for Locals 894 and 1739, per the Board's direction. No materials were withheld. To ensure there were no omissions, the material also included documents which counsel for the Locals could be presumed already to have, such as materials that were provided to me by the Locals themselves….
>
> It was entirely open to Mr. Mackenzie to perform the exact same analysis of market share using the data. Mr. Mackenzie repeats the replication at page 6:
>
> [quoted above]
>
> This is incorrect. All information relevant to performing this analysis was applied and was accurately analyzed. The results of the analysis, therefore, can be tested and are reliable. In any event, since the coded lists were provided to me by the Locals, in the first place, that information was already in the hands of the Locals, their counsel and consultants. No information other than what was provided (and was already available) is required to perform the market share analysis.

135. Mr. Mackenzie did not reply directly to these statements. If the results of the data are not replicable, then surely Mr. Mackenzie tried to replicate them and could not. Was the difference a 0.5% difference or was it a 50.0% difference? No such analysis of the data is offered.

136. This is not simply a conflict to be reconciled by oral evidence. The Local Unions wished to call Mr. O'Grady and Mr. Mackenzie and examine them on their reports. I do not know how this particular difference would be resolved by oral evidence. Would the Board and the parties watch as Mr. O'Grady and Mr. Mackenzie tabulated the results? There is no shortage of replies and surreplies in these reports. If the Local Unions had come to a different result from the data than that arrived at by Mr. O'Grady, I would have expected them to say what that result was.

137. All that Mr. Mackenzie says in his second reply is:

> [Mr. O'Grady's rebuttal] asserts that "the only departure from this [the Reed data] was if Locals 894 and 1739 provided additional data ". That is simply not true. It is clear from the material provided that the Reed data on their own are useless for the purpose of evaluating union density. Not only is the list of projects incomplete, but the data were not helpful in determining whether or not a project actually went ahead, whether or not there was electrical work involved in the project or which union, if any, represented the electrical workers on the job. All the information was provided by the local unions using their own (unspecified) resources. The accuracy of the data cannot be verified from the information provided. And it is self-evident that the projects included in the analysis found their way onto the list from a variety of different sources based on the judgments from a variety of different sources.

138. Whatever one may wish to say about the materials provided by Local 353, surely Mr. Mackenzie's clients could have taken the time to review their own data with him and ensured that that was accurate. Once he had a completely accurate set of data, then he would have been able to determine whether Mr. O'Grady's statistical analysis of the market share of at least those two Local Unions was or was not accurate. Once again there is no attempt to do that. In the absence of any demonstrable error, Mr. Mackenzie's criticism does not provide any significant challenge to Mr. O'Grady's analysis of the data.

## 6. Conclusions about Market Share

139. Mr. O'Grady's conclusions about market share are summarized in the Appendices to the Armstrong Report. Mr. Armstrong accepted them as accurate for the purposes of his report. The conclusions are best set out in the same form as they appear in Mr. O'Grady's appendices.

**Local 1739**

Figure No. 10
Construction Shares based on Reed Construction Data

| | IBEW | | Non-Union | CLAC | Total |
|---|---|---|---|---|---|
| Type of Construction | Resident Contractor | Non-Resident Contractor | | | |
| Industrial* | 0% | 36% | 64% | 0% | 100% |
| Commercial** | 0% | 7% | 76% | 17% | 100% |
| Institutional | 8% | 5% | 77% | 10% | 100% |
| Residential | 0% | 31% | 69% | 0% | 100% |
| Share of Total | 3% | 14% | 74% | 9% | 100% |

* The Reed Construction Database is not reliable for industrial work. See discussion below.

** Projects with split union/non-union codes were apportioned union/non-union equally

> Two large industrial projects identified by the International's project monitoring service were not included in the Reed Data coverage: Baxter Healthcare ($2.0 million) and Midland Baker ($3.0 million). When these

projects are added to the above list, the IBEW share of industrial work increases to 49%.

Figure No. 10 suggests a number of trends:

1. The IBEW share of total construction is about 17%. (This rises to 18% with the inclusion of the two industrial projects omitted from the Reed Data coverage).
2. Non-resident contractors account for more than 80% of the IBEW share.
3. For industrial construction, the IBEW share is virtually half (if two projects not covered by Reed Data are included)
4. For commercial construction, the IBEW share is about 7%. Non-resident contractors account for all of that work.
5. For institutional construction, the IBEW share is around 13%. Resident contractors do about 62% of institutional work.
6. CLAC contractors do significantly more commercial work than IBEW contractors and almost (but not quite) as much institutional work as IBEW contractors. (IBEW: 13%, CLAC: 10%). It is also important to note that the average size of the CLAC contracts in the institutional market was more than double that of the IBEW contractors. In other words, it is CLAC contractors that are enjoying the economies of scale and the reputation that comes from doing larger projects in the institutional market.
7. In the residential sector, IBEW contractors have a respectable share (31%), considering how difficult competitive conditions are in that sector. All of that work appears to be done by non-resident contractors.

**Local 894**

In the last six years, EPSCA work has accounted for about one-third of employment hours reported by Local 894. Figure No. 9 shows that this has varied from a low of 13% to a high of 49%.

Figure No. 9
Distribution of Hours between ICI and EPSCA
Local 894

| | ICI | EPSCA | Total | EPSCA% |
|---|---|---|---|---|
| 2003 | 838,406 | 423,318 | 1,261,724 | 34% |
| 2004 | 888,883 | 846,077 | 1,737,960 | 49% |
| 2005 | 894,324 | 662,429 | 1,556,753 | 43% |
| 2206 | 732,440 | 111,200 | 843,640 | 13% |
| 2007 | 765,208 | 183,878 | 949,086 | 19% |
| 2008 | 806,063 | 231,193 | 1,037,256 | 22% |
| | 4,925,324 | 2,461,095 | 7,386,419 | 33% |

We cannot determine the distribution of ICI hours across industrial, commercial and institutional work, though it is likely, given Local 894's obvious strength in industrial construction, that the ICI hours are predominantly industrial.

Based on data supplied by Local 894, travellers account for a significant portion of hours worked. *Since 1988, travellers and members from other Locals working under mobility provisions have accounted for 24% of hours*. In some years this figure has been over 40%, while in others it has been in the single digits.

### Industrial Construction in Local 894's Jurisdiction

The Reed Construction Data service does not track industrial projects reliably. The International maintains a list of large projects. Based on the International's list it is clear that Local 894 has a strong share of the industrial construction market. The data are not sufficiently comprehensive to formulate an accurate estimate. However, it is likely that Local 894's share of the industrial market is 70% or better.

### Commercial and Institutional Construction in Local 894's Jurisdiction

We compiled a list of all commercial and institutional projects reported by Reed Construction Data for the period January 1, 2008 to July 31, 2009. Some of these projects have not been put out to tender. Some have been completed, while others are in progress. Some projects may have been miscoded by Reed Construction Data and therefore reported more than once. For contract value, Reed Construction Data reports only the total estimated value of the project. The electrical share of the total value would vary, depending on the nature of the project. Local 894 vetted the list and identified, as far as possible, the status of these projects. There were many projects for which Local 894 was unable to identify the status. The list in Figure No. 10 summarizes the status of the commercial projects that have been awarded. Where Local 894 has filed for certification, we have classed the project as union. We include 'employee associations' in the non-union category.

Figure No. 10
Status of Identified Commercial Projects
In Local 894's Geographic Jurisdiction

| | | |
|---|---|---|
| Non-Union | $126,846,620 | 48% |
| CLAC | $66,682,120 | 25% |
| Unknown | $6,521,150 | 2% |
| CLAC / IBEW | $2,000,000 | 1% |
| IBEW | $61,796,370 | 23% |
| | $263,849,260 | 100% |

Figure No. 10 shows that, based on identified projects, Local 894's share of the commercial construction market was around 23%. There were a number of projects for which the contractor could not be identified. It is likely that most of these were non-union. Consequently, the 23% figure could overestimate the IBEW's share of the commercial market. Around 58% of commercial work done by the IBEW is undertaken by non-resident contractors.

Figure No. 11 shows the results for the institutional market. Because one project (Lakeridge Hospital) dominates these numbers, we report the results both with and without this project:

Figure No. 10 [sic]
Status of Identified Institutional Projects
In Local 894's Geographic Jurisdiction

| | | |
|---|---|---|
| All Projects | | |
| IBEW | $142,901,205 | 55% |
| Non-Union | $117,919,435 | 45% |
| | $260,820,640 | 100% |
| | | |
| Excluding Lakeridge Hospital | | |
| IBEW | $51,401,205 | 30% |
| Non-Union | $117,919,435 | 70% |
| | $169,320,640 | 100% |

### Local 353

Figure No. 6
Estimates of Market Share
Based on Reed Data Projects

| Sector | Total Number of Projects | Total Project Value | Total Number of IBEW Identified Projects | Total IBEW Identified Project Value | IBEW Share |
|---|---|---|---|---|---|
| Commercial | 212 | $1,827,493,591 | 45 | $596,598,060 | 33% |
| Industrial | 33 | $246,230,934 | 7 | $118,143,700 | 48% |
| Institutional | 524 | $1,606,187,596 | 196 | $563,583,683 | 35% |
| Residential | 107 | $874,577,027 | 32 | $527,794,191 | 60% |
| Residential-Condo | 126 | $4,780,144,512 | 87 | $3,398,567,600 | 71% |
| **Grand Total** | **1,002** | **$9,334,633,660** | **367** | **$5,204,687,234** | **56%** |

Figure No. 7
Estimates of Market Share
Based on Reed Data Projects
with Additional Projects Identified by Local 353 Added

| Sector | Total Number of Projects | Total Project Value | Total Number of IBEW Identified Projects | Total IBEW Identified Project Value | IBEW Share |
|---|---|---|---|---|---|
| Commercial | 233 | $4,029,993,591 | 66 | $2,799,098,060 | 69% |
| Industrial | 39 | $2,279,230,934 | 13 | $2,151,143,700 | 94% |
| Institutional | 528 | $2,976,987,596 | 205 | $1,934,383,683 | 65% |
| Residential | 109 | $1,001,577,027 | 35 | $654,794,191 | 65% |
| Residential-Condo | 144 | $7,748,144,512 | 105 | $6,366,567,600 | 82% |
| **Grand Total** | **1,053** | **$18,035,933,660** | **424** | **$13,905,987,234** | **77%** |

> As can be seen from Figures 6 and 7, the Local 353's share of the construction market, depending on the project list used, ranges from 33-69% in the commercial sector, from 48-94% in the industrial sector, from 35-65% in the institutional sector, from 60-65% in the residential sector, and from 71-82% in the condo sector. Overall, the data indicate that Local 353's share is between 56% and 77% of the construction market. The previous analysis of ESA permit data suggested a market share of 63% which is more or less intermediate between these two estimates. In any event, the data confirm that Local 353 has has [sic] a strong position in the construction market.

140. These statistical conclusions cannot be taken as precise and exhaustive statement of the market share of each of the Local Unions. I accept that there are weaknesses and uncertainties about the precise numbers. Because of the limitations of the data, there is no exact point by point comparison. They do, however, give a general idea of market share by sector at least over the period since 2004. More importantly, to the extent that they identify certain information for a particular period of time, they are, however, in my view, reasonably reliable. I do not accept the criticisms of Mr. Mackenzie. Overall, they do indicate relative sizes of market share and relative results of performance. The trends that they demonstrate are likely to be very accurate. To the extent there are weaknesses, they are as likely to be found in the figures respecting the Local Unions as they are to be found in those relating to Local 353. What is most significant is that the Local Unions were unable to demonstrate even a single error in any of the compiled data. Their assertion that the results of Mr. O'Grady's report cannot be replicated is an unsupported assertion that the Local Unions have not attempted to demonstrate.

### 7. Analysis of these conclusions

141. It is evident that the market share of Local 353 was greater in every sector of the construction industry when compared to Locals 1739 and 894. Local 353's market share was significantly better than that of Local 1739 in all sectors. It was significantly better than Local 894 only in the industrial, residential and commercial sectors, and slightly better in the institutional sector. The question is not, however, who comes first in a statistical race, but what it means.

142. The measure of industrial activity was not as reliable as that of the other sectors as the Reed data did not track industrial project reliably and Mr. O'Grady relied more heavily on the list of projects supplied by the International Union, as supplemented by the Locals, for that sub-sector. Locals 894 and 353 demonstrated a good share of the available industrial work (70% and 94% respectively), while Local 1739's share was identified as 36%. For Local 894, industrial work is significant, as is work in the electrical power systems sector. The difficulty with that measure of success is that the amount of work is declining in the industrial sector. This was certainly Mr. O'Grady's conclusion, one that was echoed by all parties to these proceedings. What was significant for Mr. O'Grady was that Local 353 had responded to the decline in industrial activity by increasing its share of institutional and commercial markets (Appendix D, p.3) and the two Local Unions did not.

143. Mr. O'Grady also pointed out that the two Local Unions face a challenge that Local 353 does not – the Christian Labour Association of Canada ("CLAC"). Although Mr. O'Grady had no statistics for CLAC in Local 353's area, no party disputed that it was not a significant presence in the Greater Toronto Area. By contrast it is very significant in the area of the other two locals. In Local 1739's area CLAC is more significant in the commercial market, and is

almost as strong as the IBEW in the institutional market. In Local 894's area the figures were provided only for the commercial market where CLAC holds a slightly larger share.

144. CLAC represents a greater challenge than non-union contractors in terms of organizing. CLAC is not an organization held in high esteem by any of the parties to this application. Whether one regards them as a legitimate trade union or not is irrelevant for this decision. CLAC is recognised as a trade union by the Board, is capable of filing applications for certification, and represents a real institutional threat to the IBEW in its quest to represent electricians. It is certainly a universal characteristic of collective agreements entered into by CLAC that the wage rates are lower than those negotiated by the IBEW, though not as low as non-union rates. They also provide no restriction on the mobility of employees whatsoever, unlike the IBEW's Principal Collective Agreement.

145. Certainly no one quarrelled with the proposition that it was harder to displace CLAC than to organize the unorganized. Interestingly, Mr. Mackenzie said in his first report:

> At the same time, Locals 894 and 1739 operate in a more competitive union environment than does Local 353. The Christian Labour Association of Canada (CLAC) has a particularly active presence in the area around the GTA, but is virtually invisible within the GTA. This means that whereas Local 353 has a relatively clear run at organizing activity in its area of jurisdiction, Locals 894 and 1739 face aggressive competition from CLAC in their areas of jurisdiction.

Mr. Mackenzie made this point as part of an explanation for why the IBEW market share might be less in the jurisdiction of the two Local Unions. However it is worth noting that he too regards CLAC as a significant challenge to the IBEW.

146. Finally Local 353 is far more present in the residential sector than either of the other two Local Unions. Indeed, as noted in part by Mr. O'Grady and confirmed by Mr. Leduc in his oral evidence, *all of the residential work in the area of Local 1739* was performed by contractors based in the Toronto area and using members of Local 353. Even then, these Toronto contractors and members are performing 31% of the available work. In Local 894's area no reference was made to the residential market at all, nor did Local 894 claim to have any presence there. It pointed to the very high percentage of residential work that Local 353 does and argued that this is because there was no high-rise residential construction in Local 894's area. The statistics are divided between "Condo" and "other residential". The two Local Unions treated it all as high-rise work as if the proposition were self-evident. My own perception (which is not evidence) is that there is very little high-rise residential construction other than condominium construction (outside the non-profit sector). Certainly the contractors who perform almost one-third of the residential construction in Local 1739's area are, as Mr. Leduc testified, working on low-rise construction. Those Toronto contractors did not suddenly switch from high-rise to low-rise construction just because they crossed an IBEW local union boundary. The 60 or 65% share of the non-condo residential construction that is performed by Local 353 members is likely low rise in part, if not almost entirely. (I note that Mr. Leduc referred to 6 residential contractors resident in Local 1739's geographic area in his Reply will-say statement by name. No further evidence was filed with respect to those contractors, and certainly nothing offered by way of oral evidence.)

147. Certainly the contractors who perform almost one-third of the residential construction in Local 1739's area are, as Mr. Leduc testified, working on low-rise construction. Those Toronto contractors did not suddenly switch from high-rise to low-rise construction just because they crossed an IBEW local union boundary. The 60 or 65% share of the non-condo residential construction that is performed by Local 353 members is likely low rise in part, if not almost entirely. (I note that Mr. Leduc referred to 6 residential contractors resident in Local 1739's geographic area in his Reply will-say statement by name. No further evidence was filed with respect to those contractors, and certainly nothing offered by way of oral evidence.)

148. One additional feature of the landscape that applies only to Local 1739 is the fact that virtually all of the contractors who employ its members come from out of the area. Local area contractors perform 3% of the total construction work in the area.

149. The significance of the difference among sectors and the trends in increasing or decreasing market shares in each sector or sub-sector market is significant in respect of the changing economy of Ontario. Both Mr. Armstrong and Mr. O'Grady commented on general economic trends which they concluded were common both to Ontario and to North America in general. Construction work was, in their view, shifting from industrial to commercial and institutional work. The Local Unions referred to this as the "de-industrializing of the economy". Accordingly, greatest potential growth would come in those sectors of the construction industry other than industrial.

150. In addition they pointed out that demographic trends drive construction. Essentially the more people there are the more commercial and institutional construction will go on to service their needs.

151. Mr. Mackenzie dismissed that starting point as being "interesting local colour" but essentially of no value. Mr. O'Grady reiterated his comments in the Local 1739 appendix:

> Population growth drives residential, commercial and institutional construction. Based on these projections, it should be expected that long-run constructing demand in these markets will be strong in Simcoe County, especially in the area served by Highway 400.

In his final report, Mr. Mackenzie accepted that proposition, but again said that "these projections are not relevant to an assessment of the relative performance of the locals". That is true, but the purpose of these studies was not to create an historical record. It was to examine the current situation as demonstrated over a few years, in order to project what will or should happen in the future.

### *Additional issues that may have affected the analysis*

### *The effect of Bill 69 and the Toronto Working Agreement*

152. The effect of section 160.1 of the Act (now repealed) and O/Reg 105/01, the regulation thereto had the effect of limiting the subcontracting clause in respect of electrical work to Board Area 8 in respect of, by now, 10 or 11 large general contractors, all but one of which are active in the area of the three Local Unions. In Board Area 8 they must use an electrical

subcontractor bound to a collective agreement with the IBEW. They are not required to do so in the area of the Local Unions.

153. In addition, the greater density of union organization in Toronto means that, certainly within the City of Toronto general contractors who are not bound to a subcontracting clause (such as PCL) nonetheless prefer to use unionized electrical subcontractors. That is, of course, one of the advantages of greater union activity in a given area.

154. The effect of the Regulation is impossible to judge quantitatively. However, Local 894 is not entirely without such advantages. Its greatest sources of work are the two nuclear plants at Darlington and Pickering, and the GM plant in Oshawa. The EPSCA collective agreement guarantees that most if not all of the contractors who perform work on the Darlington and Pickering sites must employ members of Local 894 or members of other local unions referred through Local 894. The other source of work, the GM plant in Oshawa, is under no such obligation. However the historical hostility of the CAW to non-union contractors working in plants where it represents employees has had a beneficial effect for many construction unions in the Province of Ontario.

155. Local 1739 has no such feature in its area although many contractors bound to collective agreements with the Union have succeeded in obtaining contracts from the Honda plant in Alliston.

*Size of Projects*

156. The Local Unions argued that, given that the towns and rural areas in their geographic areas have a lower and less dense population pattern, the size of projects are likely to be smaller. It was asserted that it is harder to organise smaller-scale employers, and harder to amass large quantities of work that make a difference to a statistical analysis. They also point to the ease of movement and the greater ability to ascertain information during organizing in an urban area.

157. However, this is not borne out by an analysis of the data. Using the data assembled by the Ontario Construction Secretariat to distinguish between union and non-union work based on the value of certificates issued by the Electrical Safety Authority (no project no matter how small that involves a new or modified connection to the grid of a utility proceeds without one), Mr. O'Grady produced the following chart:

Union/Non-Union Shares of ESA Permits by Permit Value

| | IBEW | Non-IBEW |
|---|---|---|
| Permit Value: $1-$100 | | |
| Local 353 | 33% | 67% |
| Local 894 | 12% | 88% |
| Local 1739 | 20% | 80% |
| Permit Value: $101-$500 | | |
| Local 353 | 39% | 61% |
| Local 894 | 15% | 85% |
| Local 1739 | 20% | 80% |
| Permit Value: $501-$1,000 | | |

| | | |
|---|---|---|
| Local 353 | 45% | 45% |
| Local 894 | 26% | 74% |
| Local 1739 | 18% | 82% |
| Permit Value: $1,001-$5,000 | | |
| Local 353 | 49% | 51% |
| Local 894 | 36% | 64% |
| Local 1739 | 24% | 76% |
| Permit Value: >$5,000 | | |
| Local 353 | 64% | 36% |
| Local 894 | 50% | 50% |
| Local 1739 | 20% | 80% |
| Permit Value: All | | |
| Local 353 | 37% | 63% |
| Local 894 | 14% | 86% |
| Local 1739 | 19% | 81% |

> As can be see from Figure No. 5, *Local 353's share of the electrical contracting market exceeds the share of the other two Locals in every size category and, in most cases, exceeds by a significant degree.* Overall, Local 353's share of the electrical contracting market is roughly double, and perhaps more, than the respective shares of the Locals 894 and 1739.

158. Mr. Mackenzie was critical of the use of the ESA permits data. He points out that the authors of the Ontario Construction Secretariat themselves expressed doubts about the quality of the data in the body of their own report (from which Mr. O'Grady drew the data). However what they said was:

> This data and analysis does not result in a measure of market share. While the data provides a useful reference point of unionized construction activity by region, it should be used in conjunction with other potential measures of union activity [and he proceeds to give several examples].

Mr. Mackenzie emphasized the first sentence in bold. However, as is obvious, Mr. O'Grady was using the ESA permits data as a check or review of the other data he had assembled, just as the authors of the report Mr. Mackenzie cited suggested.

159. There is always an attraction of the argument that a large size will lead to economies of scale. Even Mr. Mackenzie noted this for different purposes. At page 6 of his first report he says:

> The difference in economic structure between the Local 353's area and the areas of the other two locals is also significant. Reflecting its location in Canada's largest metropolitan area, Local 353's geographic jurisdiction tends to dominate the universe of large projects available to all three locals. This gives rise to economies of scale in organizing and servicing that there by disproportionately advantaged Local 353.

These economies of scale are, to some extent, lost when the geographic area over which the resources of a combined local union might need to be spread. However, it is unlikely that a single organizer will be more efficient or productive that one who is joined by others, permanently or for short periods of time, to conduct organizing campaigns.

160. On the other hand, it is certainly the experience of this Board that the great majority of applications for certification under the construction industry provisions of the Act refer to a bargaining unit of between 2 and 15 persons, with an average below 10. That is, organizing appears to be directed at, or more productive of an application for certification, when dealing with smaller scale contractors, and hence those likely to be working in less geographically dispersed areas.

*Mr. Armstrong's Conclusions*

161. Mr. Armstrong's conclusions are set out succinctly at paragraph 75 of his report:

> The facts disclose that throughout the composite region covered by the jurisdictional boundaries of Locals 353, 1739 and 894, the IBEW is facing a competitive crisis. The causes are clear. Existing geographic boundaries are in fundamental conflict with both prevailing patterns of development and the residency of members and potential members. Moreover, the membership and consequently the limited resources of the two smaller Local unions, 1739 and 894, are insufficient to allow them to mount effective growth strategies within their geographic regions, especially in the commercial and institutional sectors. Existing boundaries prevent the much larger resources of Local 353 from being deployed beyond its overly restrictive boundaries. In short, the asymmetry between existing geographic lines of jurisdiction, on the one hand, and both residency and prevailing ex-urban development patterns, on the other, are in urgent need of rectification if the IBEW is to grow - some would argue survive - in this central core area of southern Ontario.

162. He specifically disclaimed reliance on any conclusions about imprudent or ineffective use of available resources. He declined to do a "comparative ranking of the relative competence of the three locals, or of their respective achievements", since he had not attempted to inquire into those issues. He attributed the "crisis" in the areas of the Local Unions to the fact that the two Local Unions' geographic boundaries presented no rational correspondence between membership residency, economic deployment and those boundaries. He concluded that the continued existence of the Local Unions would "perpetuate a situation that will inhibit the growth of work opportunities for the current and future members of all three of local unions". He attributed the opposition of Local 894 (and for his purposes assumed that the opposition was equally strong in Local 1739) to a fear of change that is common to all of us. He also made reference in his conclusions to the travel patterns of members of Local 1739, which I have found to be overstated.

163. He concluded that the solution was a merger of the three local unions. He was very brief about his reasons for that particular solution. They are set out at paragraph 86 to 89 of his work. I will deal with the substance of them below.

**Mr. Flemming's Considerations**

164. Mr. Flemming accepted the findings and the conclusions of Mr. Armstrong's Report as delivered to him. He did not claim to have reviewed the data and the conclusions in the same detail that I had done in this decision. It appeared to him to be correct and convincing. The expertise and authority of Mr. Armstrong as an expert in the world of Labour Relations generally and the construction industry in particular played a part in Mr. Flemming's acceptance of the Report.

165. In addition, the Report confirmed some of the beliefs he held about the local unions to which he testified in his oral evidence. The existence of three local unions with three different sets of rules (both the collective agreement provisions and local hiring hall provisions) provided a limitation on the efficiency of contractors active in all three areas. There was basically no organizing in the residential sector by either of the two Local Unions, and they had a very weak position with respect to commercial and institutional work in those areas. The market share of the two local unions was just as low, or perhaps lower, than his rule of thumb ratio indicated. His own personal experience in attempting to assist contractors in their attempts to arrange economic bids for the Parry Sound Hospital and the Royal Victoria Hospital led him to the same conclusions as those to which Mr. Armstrong came about the difficulty confronting contractors bidding a large job, at least in the area of Local 1739.

166. In assessing those considerations, Mr. Flemming did not say that he simply accepted Mr. Armstrong's conclusions and gave the matter no further thought. Prior to retaining Mr. Armstrong, he had formed certain beliefs about Locals 894 and 1739. He believed that the two Local Unions had a very different "culture" from that of Local 353 and that this prevented a barrier to the growth of the two Local Unions. Further, Local 353 had a philosophy or an outlook that encouraged, promoted and advanced the organizing of the electricians not currently represented by the IBEW, which was not shared by the other two Local Unions. He concluded that "we need to spread a culture that exhibits that kind of result [i.e., Local 353's organizing success]."

*"Culture of the three local unions"*

167. The comparative talents of the three locals and a ranking of their relative competence was not a consideration for Mr. Armstrong. He said that his mandate did not direct him to a consideration of such factors, and the evidence that he did have was either anecdotal or did not constitute empirical evidence on which he was prepared to comment (see paragraphs 76 and 78 of the Report). He looked at the relatively weak performance in obtaining market share and attributed it to small memberships and severely limited resources.

168. Mr. Flemming accepted this analysis but also testified that he considered a merger to be the appropriate action because of different "cultures" of Local 353 on the one hand and the Local Unions on the other. He was not pressed particularly about the details, but when asked to explain, he said that Local 353 seemed to have a culture of organizing that was lacking among the other two. Local 353 has succeeded in organizing and expanding their membership by a large number of people. He also said that he thought Local 353 was prepared to try innovative approaches to expanding their market share and that the other Local Unions did not seem to wish to do so.

169. The evidence of Mr. Gillett and Mr. Leduc is instructive in this regard. Their submissions and their oral evidence placed a great value on the fact that the current local union structure enabled their members to travel in a more restricted area to seek work opportunities. Mr. Gillett said none of his members would drive to Mississauga for work since that would involve driving across Toronto which would take one hour at 5:30 a.m. and two hours at other times during the day. He said in fact that Local 894 members who live in the Peterborough and Lakefield area would refuse to go beyond Port Hope or Clarington, even to the extent of refusing to work in Pickering, which is also in the geographic jurisdiction of Local 894. They certainly would not drive further than that to seek work.

170. Mr. Leduc, too, said that his members did not wish to travel outside of the area. He cited difficulty of crowded traffic in Toronto, the length of the drive and the reputation for violence of Toronto streets. He acknowledged that it would take 2 hours to drive from one end of the geographic jurisdiction of Local 1739 to the other, and that a substantial portion of his members have traveled outside the area to work when the necessity required them to do so.

171. All of us would like to travel a short distance as possible to work. That includes lawyers and Vice-Chairs. If one has arranged one's life to reduce travel time, it is difficult to criticise anyone else who shares the same desires. However, even within the geographic jurisdictions of the Local Unions, most members of the IBEW are prepared to travel considerable distances to look for work. There are more Local 353 members in each of the two local areas than there are members of the two Local Unions. All of them have opted to join the Local 353 because they are prepared to travel outside the area for virtually all of their work opportunities. It is of course the members of Local 353, employed by those large Toronto contractors about whom the Local Unions are concerned. They too on occasion travel out of the jurisdiction of Local 353 to obtain work. There is some mobility under the Principal Collective Agreement and the evidence of both Local Unions was that Toronto contractors exercise that right fully. As a value, travel within the geographic regions of Local 894 and Local 1739 would appear to be a priority for only a small number of members of the IBEW. It is a distinct and definite advantage to members of the Local Unions, but it is not a value that is shared by most other union members in the same geographic area.

172. In the view of both Mr. Gillett and Mr. Leduc, if a merger were to take place, large Toronto contractors would bring their crews from Toronto into the geographic areas of Locals 1730 and 894 and their members would see little or no work. They attributed this to a number of factors, which were expanded upon more precisely in argument. They believed that the preference of Toronto contractors for Local 353 members came from (a) the greater flexibility in scheduling that arises from being able to move the same crews over a wider geographic area; (b) the hiring hall rules in Local 353 which allow them to temporarily lay off electricians and hence maintain crews they are familiar with; and (c) a general and unjustified dislike of members of their respective Locals. I accept that these fears are legitimate and real. The International Union ought to have paid more attention to them when looking at its proposed action. However the reality is that neither Mr. Gillett nor Mr. Leduc was prepared to address the causes of those preferences. There are some countervailing costs to using Local 353 members from Toronto. When those employees travel from Toronto they must be paid a travel allowance or in some cases room and board. Mr. Leduc testified that he checked the paycheques of Local 353 members working in his jurisdiction to ensure that they had been paid the correct amount, so they do represent an additional cost to a Toronto contractor. The only position of Mr. Gillett and Mr. Leduc was to focus on the negative consequences to their members of losing the barriers

created by local union jurisdictions. Neither had, nor had in the past attempted, any proposal to lessen the negative perception held by these Toronto contractors nor to address the economic advantages presented by bringing in members of Local 353.

173. The narrowness of this concern is illustrated in another response of the Local Unions to one of the proposals made by the International Union during the merger implementation process. The International Union suggested that the Local 353 hiring hall rules be changed so that members who reside at addresses that were covered by the "postal code" areas of the former to Local Unions would be able to refuse work outside of their former geographic areas without losing their place on the list. Thus members were protected from an obligation to work outside of their former geographic area and could maintain their position closer to the top of the hiring hall list for those jobs that did come up in their local area. The Local Unions saw that system as being of no benefit to their members because the postal code designation would not distinguish between their current members and members of Local 353 who live in the current geographic areas of the two Local Unions. That group of Local 353 members is of course significantly more numerous than that of the members of the two Local Unions. Both Local Unions were concerned that they would be “swamped” by those members, despite their need to travel the same distances.

174. At the time the applications were filed, Local 353 had a program whereby it attempted to incorporate Internationally Trained Electricians (“ITE”) into the IBEW. This has been a problem for the IBEW for some time (see *11206468 Ontario Ltd. c.o.b. as Quadracon,* [2000] OLRB Rep. Sept/Oct 989). There are of course persons who have received some training in electrical work in other countries who seek similar work here in Canada. They are difficult to organize or to incorporate into the IBEW as they are not fully certified electricians, although they may have worked as if they were. Local 353 developed a plan which would give them union membership, provide for lower wage rate while they were training, and add a regular training component to their work week so that they might qualify for a Certificate of Qualification as soon as possible. For reasons that are not provided to the Board, the program was discontinued by Local 353 as unworkable. However, both Mr. Gillett and Mr. Leduc criticized the plan. Obviously there was something wrong with the plan, but that is not what they focussed on. Mr. Gillett asked rhetorically “why bring more people in"? He said he would prefer to give a lower wage rate to the unemployed members of Local 894 and he regarded the ITE's as just “cheap labour for contractors while our members are unemployed". Mr. Leduc testified that he believed a statement made by the President of the Georgian Bay Contractors Association that Guild Electric and other Toronto contractors would "flood" the Barrie and Oshawa areas with ITE's because they were a cheap source of labour.

175. The primary threats to the IBEW identified by virtually every person and party in this proceeding were CLAC and non-union employers. Mr. Gillett said that CLAC was "not a major presence in our area" and that there was simply "not much CLAC" in the area. For reasons set out above I accept the accuracy of the figures given in Mr. O'Grady's Appendix with respect to market share within the geographic area of each of the two Local Unions. With respect to Local 894, he shows that CLAC has a greater market share than Local 894 in the area of commercial construction. As indicated above, the only distortion in that figure might be to understate the non-union or the CLAC share of the market. Whether the CLAC market share is slightly above or slightly below that of Local 894, the reality is that in commercial work it has a very large presence. Mr. Gillett does not appear to have noticed them. Mr. Leduc was aware that CLAC contractors were active in his area. His only comment was that they all seemed to be from

southwestern Ontario. That is, they were not his fault, and were certainly not something he had any plan to deal with.

176. Similarly both witnesses said that the non-union contractors active in their area were all from Toronto. That may well be true, but again it is a rather passive response to a problem that exists in the area. If they have been squeezed out of the area by Local 353, it is surely incumbent on the Local Unions to organize them. Both men said they had participated in organizing campaigns that involved several local unions because of the locations of all of an employer's projects.

177. In addition, Mr. Leduc agreed that the residential work done in Local 1739's area was all done by Toronto contractors employing Local 353 members. His perception was that they were contractors who had developed a relationship with a builder and followed that builder around from job to job. He said he approved of this kind of relationship and thought it was entirely appropriate. He certainly was not seeking any of that work for his members.

178. On the subject of the growth of their local union membership, both men were quite optimistic. Mr. Gillett said that he considered the growth of Local 894 to have been excellent. He boasted of the second-highest percentage growth rate in the Province over the previous nine years before the application. That may be true, but the membership of Local 894 has been steadily falling over the last 4½ years. Mr. Gillett said "we expect the membership of Local 894 to grow by two or three times in the next 5 to 7 years based on the existing plans on the books". He said further "we can't create work, but it is coming". When asked what plans there were "on the books", Mr. Gillett identified the two nuclear projects at Darlington and Pickering and the GM plant in Oshawa. These three locations are of course the current source of much, if not most of, the work available to Local 894 members. Mr. Gillett also acknowledged that there had been no growth in membership for the past two years (by which he appeared to mean the two years prior to his taking the stand).

179. Mr. Leduc did not address this issue directly since growth was not particularly a priority for him. He expressed satisfaction with the fact that it is able to provide a living to the 250 members of the Local. He relied on Mr. O'Grady's statistics when the result was favourable, and not when it was not. He believed Mr. O'Grady's report demonstrated that membership growth in Local 1739 was proportional to the growth of the population in the area. He dismissed Mr. O'Grady's conclusion that Local 1739 enjoyed only a 17 or 18% share of the market because it was "all Reed data" and not reliable, despite the fact that Local 1739 had been able to supplement the data. He said that the Local had a business plan which had been developed five years ago when a representative of the International Union asked to see one. However he did not indicate what that business plan was. He said that the Local had not revised this business plan in the last five years.

### *Approaches to Organizing*

180. The position of both of the Local Unions is similar. They both attributed the low market share in residential, commercial and, to a lesser extent, institutional construction, to the difficulties of organizing employees in that sector. To put it bluntly they expect nothing will change because it cannot change. They assert that the greater degree of unionized market share in Local 353's area is due to factors such as the subcontracting provisions binding on 9 or 10 general contractors, and the greater number of large commercial projects and high-rise condominium

projects in the Toronto area. Aside from that, they argue that the other sectors are simply much more difficult to organize and that nothing much more should be expected.

181. The Local Unions acknowledge that industrial work was once the major source of work for IBEW members and that work arising from industrial construction is decreasing due to what they characterize as the "de-industrialization" of Ontario. This deindustrialization of the Province is, in counsel's words, "not their fault". He points to a newsletter of Local 353 as proof of how it is simply not possible to organize in other sectors. The newsletter refers to what was then a plan of Local 353 to incorporate Internationally Trained Electricians into the IBEW. The business manager's article in the newsletter states:

> … by using a negotiated ratio ITE's journey persons, as well as apprentices, we can establish competitive wage rates to win jobs that are presently going non-union. This is necessary in order to regain our competitive edge such as in the construction of:
>
> Elementary & Secondary Schools
> Institutional Buildings
> Elderly Care Centers
> Big Box Stores
> Community Centers
> Fire Halls
> Police Stations
> Small Hotels & Motels
> Outdoor Strip Malls
> Retail Box Stores
> Car Dealerships
> Medical Clinics
> Health Clubs
> EMS Buildings
>
> The fact is that many of these ITE's are working on these types of projects for unscrupulous employers who take advantage of their employees that undercut our union wage rates.
>
> Working cooperatively with our contractors to bid our former traditional work, the union expects to expand its influence on market share. To do nothing would mean that the work would continue to be built non-union.

182. There is no question that the newsletter identifies commercial and institutional projects as those where the IBEW has lost ground. However the article is about how Local 353 should respond to the fact that it needs to "win jobs that are mostly going non-union", "to regain our competitive edge", and "to expand [our] influence on market share". The ITE project was not continued and presumably did not produce any useful results for Local 353. However the article indicates a difference in attitude: Local 353 recognizes the problem and is taking steps (not all of which are guaranteed to be successful) to increase its representation in areas where the Union is losing ground.

183. The two Local Unions do not share that view. Mr. Gillett predicts a two or three-fold increase in membership, but only as work increases in its traditional sources of work, the nuclear stations at Pickering and Darlington, and General Motors. After the applications were filed it hired one organizer, not because Local 894 thought it would produce any results (it did not) but just to show the International Union that it could afford to do so. Since these events all occurred after the application was filed, I do not need to deal with whether the lack of success for the organizer was the result of the impending merger (as Mr. Gillett suggests) or the result of a self-fulfilling prophecy. In fact Local 894's membership has fallen over the past four years, during part of which there was a major recession.

184. Local 1739 is content so long as its 250 members were adequately employed. Its ambitions go no further than that.

185. There is no question but that the effect of a greater degree of unionization in Toronto, the presence of large commercial projects in downtown Toronto, and the effect of the subcontracting clause on 9 or 10 general contractors in Board Area 8 have a positive effect on Local 353's market share. It is not possible to accurately assess precisely how much each factor has. There are no double-blind tests available. However it is also likely that the attitude and the different levels of resources of Local 353 are also responsible for Local 353's greater market share. More significantly, that attitude and base of resources from which to start is important if market share is endangered or shrinking.

**Issues raised by the Local Unions during the course of these proceedings**

186. The Local Unions argued that there were a number of issues that were not considered by Mr. Armstrong because the International Union did not identify them as issues or because his mandate did not direct him to those considerations. Whatever Mr. Armstrong might have thought of them, they are relevant considerations for this decision. However, the fact is that most of these issues have to do with whether or not the proposed merger would in fact have the advantages that Mr. Armstrong and Mr. Flemming foresaw, and difficulties in the implementation of the merger order.

*Combined out of work lists*

187. Both Local Unions are concerned that the size of the Local 353 out of work list will result in fewer job opportunities for the current members of Locals 894 and 1739. Mr. Gillett and Mr. Leduc both recounted anecdotal evidence of discussions they had had with members of Local 353 who provided them with horror stories about the lengthy waits to be dispatched to a job that they had suffered as members of Local 353. The fact that each of them has encountered a couple of disgruntled members from a local union with over 8,000 members proves nothing. Both Mr. Gillett and Mr. Leduc testified that no one had ever shown them an out of work list for Local 353. At no time was production of such a list sought in this proceeding.

188. It is not possible to assess this issue. The larger local union will have a greater number of job opportunities. Whether, overall, the number of jobs available to the average member will be higher or lower in a combined system is not a question the Board can answer on the basis of the evidence before it.

189. The greater concern expressed by the Local Unions is that the size of the Local 353 out of work list is not ascertainable. Local 353's appendix in the Principal Agreement permits an employer to lay off an employee without severing employment for the purposes of the hiring hall. The employer is obliged to pay health and welfare and pension premiums during that time and the employee need not report to the hiring hall. The employer may then recall him or her without making reference to the hiring hall. Locals 894 and 1739 operate differently. If an employee is laid off due to lack of work, the employment relationship must be severed and the employee must return to the hiring hall and will be placed at the bottom of the list. When the employer wishes to increase its workforce, the employer must call the hiring hall and take whoever is at the top of the list of the relevant local. Hence the two Local Unions fear that the Local 353 list will move more

slowly because an employer may simply recall employees to work without having resort to the hiring hall.

190. This is not an unreasonable concern. Mr. Flemming's evidence, while deliberately vague on the point, indicated that the "temporary layoff" process is one that the IBEW would prefer not be utilized. However Mr. Flemming recognized that it was also a practice which happened on an informal basis in all of the IBEW local unions whether the local union executive was aware of it or not. His view was that if Local 353 had chosen to regularize what happens under the table anyway and at least obtain the contributions of health and welfare and pension, he would not criticize it for doing so. However, the evidence indicates that this is generally not favoured among locals of the IBEW, and presumably because it, to some extent, replaces the hiring hall with individual employment relationships.

191. It may also allow employers to create a "favoured class" of employee, the employees that an employer finds the most productive and most amenable to its direction and deployment. That is true, but the reality in most of the unionized construction industry is that if an employer finds an employee to be unsatisfactory, the employer will simply lay off the employee for lack of work after a short period of time. If the employer values the employee, it will do its best to find or make work for him or her even in slow times. This is true for every building trades local union in Ontario.

192. The concern of the two Local Unions is legitimate, if perhaps somewhat overstated. The Board is aware that hiring halls operated by construction trade unions tend to have looser rules in Toronto and much tighter rules in other areas of Ontario. There is a real possibility that Toronto contractors would carry their crews into the regions currently serviced by Local 1739 and Local 894 and obtain only a limited number of workers, if any, from the hiring hall, who might not even come from the local area. This is not in and of itself a reason to refuse to make any structural changes. It has not prevented 70% of the members of the IBEW living in the two areas falling within the geographic jurisdiction of Locals 894 and 1739 from choosing Local 353 over either of the two Local Unions. If the difference in the hiring hall rules in the current structure of the IBEW provides a significant benefit to the 30% of the IBEW members living in those local areas who are members of the two Local Unions, at the expense of the remaining 70% who live in the same area, then it is hard to see a principled reason why they should continue to enjoy it.

193. It does however present a real issue as to the integration of the members of the two Local Unions into any form of structural change that involves Local 353, be it by way of merger or otherwise. This is an issue that the International Union failed to address at all. Local 353 offered nothing in the way of guarantees, as it was not asked to do so. It was an issue that needed to be addressed properly before any changes could be made. It is not, however, a reason to find that the International Union had no just cause to act in any fashion.

### *Scheduling Issues*

194. The other reason that the Local Unions fear that their job opportunities will be lost to Toronto contractors who will bring their crews into the local areas arises from the manner in which those contractors operate. The two Local Unions are concerned that some of those contractors do not wish to have anything to do with them or their members. This is a perfectly logical fear. After all, the complaints of the Toronto contractors have been loud and clear for some time, and the International Union paid heed to them. The one contractor (Internorth) who

believed that the merger had taken effect did bring a crew composed exclusively of members of Local 353. Guild Electric, another large Toronto contractor, had no problem articulating its view of the members of Local 1739 in 2006 on the Bank of Montreal project (see *Guild Electric Ltd.*, [2006] OLRD No. 1285, paragraph 3).

195. Even leaving those views aside, the two Local Unions acknowledged that bringing its Toronto crews into the area would be attractive to a contractor in terms of the scheduling of its workforce. Simply, it is likely more efficient to shift crews among jobs when short delays occur on one job and the crew can be kept busy on another site for a few days. It also keeps crews together that are functioning well together and so working more productively.

196. This analysis sounds intuitively correct. However, what the two Local Unions are asserting is that the current system creates inefficiencies in a contractor's work and these inefficiencies lead to greater job opportunities for the members of the two local unions, and perhaps even for a greater number of members of both Local Unions and Local 353 than would otherwise be the case. To some extent any collective agreement creates inefficiencies: overtime payments limit the productive use of crews beyond eight hours a day, the obligation to permit stewards to devote time to settling grievances leads to unproductive time from the employer's perspective and so on. However, a strategy that will create or keep inefficiencies for the sole purpose of creating job opportunities, and perhaps more job opportunities than would otherwise exist, is a difficult value to promote. It does not have some other purpose, such as enabling the union to represent its members, or preventing an employer from demanding excessive time each day from its employees. In this case the International Union was not prepared to adopt a value predicated on inefficiencies, and that was an entirely appropriate choice to make.

197. Once again, however, a decision not to remain with the status quo is only the first question. In looking at what sorts of changes need to occur, the International Union should have been looking at the effect of a merged hiring hall with no restrictions on the members of the two Local Unions. The Toronto contractors have not been shy about expressing their desires and interests. At least in the short term, the effect of a merger might well lead to fewer job opportunities for members of Local 1739 and Local 894. The International Union's merger and implementation plan fails to address that issue at all.

*Core Values*

198. The two Local Unions argue that the International Union's decision runs contrary to one of the core values of the two Local Unions: the maximization of job opportunities for members of the local union. Indeed, they argued, this was a core value for any local union. I accept that this is a core value of any construction trade union. It is not the only core value: the securing of the best wages and benefits possible, the securing of the payment of those wages and benefits, the availability of a grievance arbitration procedure, and organizing the unorganized also come to mind. However, even accepting the maximization of job opportunities as a core value of the Local Unions, that does not mean that it is not also a core value of the IBEW as a whole. The International Union has an interest in ensuring that it provides the greatest number of jobs for the greatest number of members. In the long-term, activities such as organizing the unorganized will secure more work for union members. So too will ensuring that employers are able to bid competitively on the work on which IBEW members would like to work.

199. The Local Unions cited the use of the phrase "core value" from a decision dealing with an entirely different matter. In *International Brotherhood of Electrical Workers,* [1997] OLRB Rep Nov/Dec 1022 at paragraph 39 the Board said that "a local can reasonably dissent so long as its dissent does not irreparably affect the core values of the parent union". That is not what this case is about. The fact that the maximization of job opportunities for members of any union, local or international can be described as one of the core values of the union is not a particularly useful analytic tool.

200. The argument is, in the end, a circular one. Both of the two Local Unions and the International Union (and Local 353 for that matter) all share the same core value: the desire to maximize the job opportunities for their members. Each member of Local 1739 and Local 894 is also a member of the International Union. The pursuit of that core value by the International Union and by the Local Unions may conflict, regardless of whether the International Union's expectation that the pursuit of its agenda will in the end maximize job opportunities for the members of the Local Unions in a more significant way. It is not enough to say simply that the International Union's actions conflict with the core value of the two Local Unions. The question is whether the International Union had just cause to act to enforce its view of that core value, or the means of achieving that core value, over the views of the two Local Unions.

*Stabilization Funds*

201. Stabilization funds are funds maintained by a local union from deductions from the hourly pay of each member. The monies are used selectively to subsidize wage rates on specific jobs where competition from non-union contractors provides a threat to the bids of unionized contractors. This is a strategy used by all three local unions. The merger would effectively merge the three stabilization funds. The International Union acted on the assumption that the Local 353 stabilization fund was much larger than that of the other two.

202. Initially the two Local Unions asserted that the Local 353 stabilization fund was significantly in debt, and that the merger was designed to provide Local 353 with the assets of the funds of the other two local unions to shore up a shaky financial position. The issue was not argued that way at the end of the case.

203. Local 353 called Ms. Jane Clifford, the comptroller for the Local 353 Market Recovery and Stabilization Fund. The purpose of her evidence was to explain the audited statements of the Fund. The 2009 financial statement shows a deficit of $4,445,706 (although page 1 of the auditors report suggests this is overstated by $890,000). Contrary to what any layperson looking at such a statement would conclude, this is not a sign of insolvency. Liabilities are recorded when the commitment to "stabilize" a wage rate has been made. This would always be before a bid is submitted and hence there was always a level of uncertainty about the ultimate money to be paid out. It does not mean, in the end, that the work will actually go ahead, although it often does. Funds received from deductions from members' pay are recorded only when the money is received. Ms. Clifford's explanation is that the liabilities will be paid by future earnings of employees, including those on the stabilized jobs. That is not to say that the large deficit is not a matter of concern. In late 2009 Ms. Clifford advised the Executive Board of Local 353 that they needed either to restrict the number of commitments or to increase the hourly deductions taken to the fund. That suggestion had not been acted on as of the date of these applications.

204. The two Local Unions operate their stabilization funds in different ways. Local 1739 uses a combination of cash subsidies and a reduction of certain cost items in the wage and benefit package. Local 894 relies more exclusively on subsidization of wages. Both Local Unions do not make a commitment to stabilize the job unless they have the funds in hand.

205. In the end, this is a difference between operating on a "going concern" basis and on a "windup" basis. Either option is a viable one. Indeed, Local 1739, given its very small membership and its limited resources, has likely taken the more appropriate course. A single project where the liability becomes greater than anticipated, or where an extension is necessary to keep a project going, has the capacity to overwhelm the financial resources of a small local. Local 353 has greater resources and a more diverse base of work for its membership. The "ultimate disaster" scenario, where virtually all work dries up and no more money is coming in to the fund (except from subsidized projects where the subsidy exceeds the amount deducted from each employee's paycheque) is a far more distant reality for Local 353.

206. These are both choices that are reasonably available to any of the local unions, although if acting prudently Local 1739 may only really have the pay-as-you-go option. The "going concern" approach takes greater risks (to be assessed in the context of size and diversification of the local's income) but likely leads to more stabilized projects and more work.

207. Mr. Flemming saw an advantage to combining the funds. More funds would be available for jobs in the area of the two Local Unions. The strength of Local 353's fund could be spread further. In one case, the Parry Sound Hospital project, Local 353 and Local 1739 had tried to cooperate by using both stabilization funds. Each, of course, was only prepared to subsidize the wages of its own members. The contractor refused to enter into such an arrangement with two different local unions, presumably because of the administrative inefficiency. While Mr. Flemming did not look at the financial position of the three stabilization funds, there is nothing in the end that would lead me to conclude that the merger was simply a "cash grab" or necessarily detrimental to the local union.

208. However it does not automatically follow that the merger of the three stabilization funds would be of benefit to the members of the two Local Unions. Greater financial clout would be available, but there is no guarantee that it would be used. As the Local 353 statements show, Local 353 was maximizing its use of stabilization funds within its own area. That fund is financed in part by members of Local 353 who lived in the geographic areas of the two Local Unions. It is their money that is being used to subsidize wages and jobs in Board Area 8, not in their home area. The merger will not increase the amount of money available from that group. The addition of payments from 800 members in the two Local Unions might increase the reach of those two previous funds if the same "going concern" approach to financing is taken. However a concentrated effort of organizing and capturing work in those areas or markets of the two Local Unions that are largely non-union will require a refocusing of the merged stabilization fund's priorities. This is a question that the International Union did not address at all.

*Pension Funds, Health and Welfare Funds*

209. The other area to which the International Union did not devote much thought was the benefit funds maintained for the benefit of employees of the two Local Unions. Much was made of the prejudice to these funds by any merger during the course of evidence and argument in this case. In fact the difficulties created are considerably less than was argued by the two Local

Unions. However the fact remains that there are some difficulties, and the International Union barely turned its mind to the question of those benefit funds.

210. There are three pension plans to which the members of Locals 894 and 1739 belong. The first is a defined contribution benefit plan that covers only three individuals who are members of Local 894. Counsel for the Funds explained that this was a historical anomaly, based on funds transferred in from other local unions. The details are unclear. However, its last financial statement indicates that it has liabilities for pension benefits of $377,646 and assets of $725,474 (counsel did not refer to it).

211. The other two pension funds, one for each Local Union, are defined contribution plans that hold their contributions in a joint RRSP. Hence liabilities and assets are always roughly equal.

212. The Local 353 pension plan is a defined contribution benefit plan that provides benefits as defined by the trustees. Its asset holdings suffered reverses in 2008, as did most pension funds, and currently has an actuarial deficit. The two Local Unions calculated that $0.86 per hour of current pension contributions for each member of Local 353, is being used to fund that actuarial deficit. I did not understand whether counsel was referring to the figures as at the date of the application or to current figures, nor where the figure came from. I see no reason not to accept that there is a funding deficiency that the members are required to address in the contributions.

213. Both Local 894 and Local 1739 operate Health and Welfare trust funds. These are typical funds that receive contributions for each hour worked under the collective agreement to create an hour bank for each contributing employee. Funds are drawn down from that hour bank entitlement each month to pay for various insured services. The only unique feature of these funds is the position of retirees under the Local 894 Fund. Part of the income of the Local 894 Health and Welfare plan is used to provide continuing benefit coverage to retirees, with no contribution from them. Whether these benefits are the same as those of active members or not was not put into evidence.

214. Mr. Flemming concluded that these funds should all be permitted to continue to exist, but only for existing members of the Local Unions. All other persons, and specifically new members, would become members of the Local 353 plans and would contribute to the Local 353 funds. He said he did this because he concluded that that was what the local unions wanted, although he did not ask them if they did want it. In cross-examination he said that if the Local Unions wish to merge their funds with the Local 353 funds, that would be fine with him as well. This answer was made in a rather off-hand manner and was not pursued in cross. However, it was common ground that at the implementation meetings in January, Local 353 had stated it would accept no liability for any of the funds of the other two Local Unions. Although on the facts as I have them, Mr. Fashion, then the Business Manager of Local 353, had no idea what those liabilities, if any, might be. The issues were never pursued.

215. The International Union had no information about the financial details of the various funds or what the state of the hour-bank balances of the members of the Local Unions might be. Whether the existing funds could be used to fund benefits until sufficient hour-bank credits had been built up in the Local 353 plan was never considered.

216. As the two Local Unions point out, Mr. Flemming's plan overlooks the financial consequences to these funds, particularly the health and welfare fund. A closed fund, one that receives no new members, is one in which the membership will age each year, consequently have a higher need for medical services, and thus increasing the cost of insured services. As members retire from employment, the group gets smaller and hence the administration costs are spread over a smaller number of members. The continued payment of retiree benefits from the Local 894 fund will over time make the fund unsustainable. This is particularly so when the monetary contribution per hour for a health and welfare fund in Local 353's appendix to be Principal Collective Agreement will likely be the same for all members of Local 353.

217. The pension funds appear to be less of an issue. The small defined contribution benefit plan of Local 894 could be wound up tomorrow, perhaps very profitably for its three members (although there may be restrictions on what can be done with surpluses in the fund). The group RRSP funds could continue to function as before. If at some point the administrative costs of operating a group RRSP threatened to exceed the level that each member would pay for an individual RRSP (and why that should be the case I do not know) the Funds might be converted to individual locked-in RRSPs. I also do not know what the cost of winding up the fund would be, although it strikes me that it would be less than the amount usually paid to wind up a defined benefit pension fund.

218. I come to no conclusion about the advantages or the disadvantages of any proposed or possible changes. There is no sufficient evidence before me to come to any such conclusion one way or the other. The conclusion is not relevant at this point.

219. What is relevant is that the International Union failed to turn its mind to the problems associated with the existence of separate trust funds and how to deal with those funds during the process of a merger. I accept that the consequences of the "closed" Health and Welfare Fund are ultimately to threaten the viability of the Fund. The issue of retirees under the Local 894 Health and Welfare plan is also a significant issue. There may be other issues of equal significance. By failing to address those issues at all, International Union failed to address a significant issue that was a consequence of its proposed merger. It appears that the consequences are unnecessarily costly to the members of those funds.

*Organizing*

220. Mr. Flemming believed that the merger would provide two benefits to the Local Unions: greater resources available for organizing and a different emphasis on organizing by Local 353. The second issue is discussed above. The first, however, is only theoretically true. The resources of Local 353 are available, but the International Union did nothing to ensure that resources would be devoted to organizing in the geographic areas of the former Local Unions. Without in any way being critical of Local 353, it is not unreasonable to consider whether the priorities for organizing, at least in terms of geographic deployment of organizers, might be based on priorities identified by the core business area of the existing Local 353. There is no reason to assume that this would or would not happen. However, the International Union based its merger decision on the greater availability of organizing, as well as a different attitude to organizing. It is difficult to put much reliance on that factor when the International Union is prepared to rely on it only as a possibility without setting some level of expectation on the newly merged local.

**The Decision of the IBEW**

221. Mr. Flemming received the Armstrong Report. Its conclusions were generally in accord with his own beliefs and he was persuaded by the additional information that Mr. Armstrong had accumulated, either directly through his contacts or through the work of Mr. O'Grady. He accepted Mr. Armstrong's solution, that is, a merger of the three local unions, as the ideal solution. He decided to act swiftly.

222. He did not send a copy of the Report to the Local Unions. He consulted with Mr. Hill and arranged a meeting between himself, Mr. Hill and Mr. Armstrong to persuade Mr. Hill that the merger was the correct course of action. That is all well and good; the International Union ought to have thought through their course of action to make sure that all of the necessary decision makers are of a similar view.

223. However, the International Union felt that no consultation with the Local Unions was necessary or appropriate. Mr. Hill sent a letter to Mr. Flemming dated January 8, 2010 directing that Local 894 and Local 1739 be merged into Local 353. He directed Mr. Flemming to create a committee to discuss the terms of merger but went so far as to include certain items that were required to be part of any merger or arrangement:

(i) there were to be permanent area offices in the location of Locals 894 and 1739;

(ii) the current business managers should occupy an interim position on the Local 353 executive board until the next elections (2011).

(iii) Local 353 was to amend its bylaws to provide for one permanent seat on its executive board for a "representative of former local 894" and for local 1739. (How they were to be chosen was left open).

(iv) the existing health and welfare and pension funds of the former Local Unions were to continue in existence;

(v) "There shall be fair and equitable treatment of former Local 894 and 1739 members with respect to job opportunities". (Again undefined).

224. On January 11, 2010 the two Local Unions were informed of the decision that Mr. Hill had already made. They were directed to appear at an implementation committee on January 15, 18, 19 and 20, 2010. Only in response to a request from the Local Unions did Mr. Flemming then provide them with a copy of the Armstrong Report.

225. Meetings were held on January 15, 18, 19, 20, 2010 and, at the request of the two Local Unions, on January 21, 2010. At the meeting of January 15, 2010, Mr. Flemming identified a number of issues that he thought were appropriate to discuss. The items on the list were all appropriate items to discuss in the context of a merger that had already been declared, but they were all directed at how that merger was to be effected. The discussion reflected what Mr. Flemming saw as the issues. The notes taken on behalf of Mr. Flemming, and the oral

evidence of all three witnesses was that the Local Unions had very little to say in response. I can only conclude that this is because the meetings took place four days after the letter from Mr. Hill, which no doubt was like a bolt out of the blue to the Local Unions, and the fact that they were not able to discuss anything other than the details of a decision to which they were opposed. Only on January 21, 2010, at a meeting that they requested, were the Local Unions able to respond with proposals of their own that they would be willing to discuss. These proposals were alternatives to a merger or alternatives to the issue of dispatch and hiring halls, none of which was in accordance with the International Union's merger decision and therefore led to no meaningful discussion.

226. In a letter dated January 22, 2010 to Mr. Hill, Mr. Flemming reported on these meetings. After identifying the dates and the parties in attendance he commenced by saying:

> Although all meetings were without incident and cordial, it was clear to me from the outset that Local Unions 894 and 1739 were vehemently opposed to the merger.

That should hardly have been surprising. The lack of participation in the major decision and the speed with which the International Union proceeded meant that no other response was likely.

227. The final merger was to be effective February 1, 2010. These applications were filed on January 27, 2010. The effect of subsection 147(5) was to freeze the actions of the International Union at that point.

**Merger Terms**

228. In Mr. Flemming's report to Mr. Hill, there were 18 items listed. Four of them are of significance for the purposes of this decision. Quoting from the letter these are as follows:

> 4. Health and Welfare/Trustees- the applicable H. & W. plans will remain status quo for members currently covered by those plans; trustees will remain and new trustees appointed, when necessary, according to the applicable plan text; new members will become members of the Local Union 353 plan.
>
> 5. Out of Work List - All members from the existing Local Unions 894 and 1739 that are now on their Local Union out of work list will have their names dovetailed onto Local Union 353's out of work list based on the date they became unemployed in their home Local Union.
>
> 6. Dispatch Procedure - one central dispatch list with procedures in accordance with Local Union 353 policies for ICI works, High Rise, Low Rise, Communication and Outside;….. With the new expanded geographical jurisdiction, postal code areas need to be established in order to determine the jobs the member can refuse and get the "pass". The International should maintain oversight to direct corrective measures on any abuses of dispatch, layoffs, and transfers.
>
> 7. Travel/Living Out Allowance (LOA) - to be addressed through contract negotiations except we should make a strong recommendation to implement the EPSCA language in the Local Union 353 Appendix.

229. During the hearing of this consultation, the Local Unions raised a number of issues about these proposals. While they might have raised them during the discussions at the Implementation meetings, it is understandable that they did not. The following issues are, in my view, legitimate concerns for the following reasons:

> *#4 Trustees*:
> In addition to the above issues, this order does not address how the trustees are to be elected. There may be a problem in holding elections given that a member is defined in most of the trust declarations to be a member of either Local 894 or Local 1739. If the locals are merged, the election may be problematic.
>
> *#5 and #6 Out Of Work List*:
> This provision does deal with the desire of some members of the Local Unions to refuse to accept work out of their local area, but it does not ensure that they will receive an equitable share of work opportunities in any place. Mr. Armstrong concluded that he could not rely on the anecdotal evidence from some contractors about the poor quality of workmanship or other complaints that they had about members of the two Local Unions. I assume for purposes of this decision that the complaints are groundless. That does not mean that certain contractors do not hold those beliefs. It is not very difficult for a Vice Chair, (who definitely lacks the expertise to operate a construction business that employs hundreds of electricians), to think of ways to hire employees for projects in downtown Toronto that would not be attractive to residents of Barrie or Oshawa and then after a few days to send them to work on new projects beginning in Orillia or Peterborough. This issue is simply not addressed.
>
> *#7 Travel and Board Allowance*:
> This is a good idea. However in the absence of any amendments to the Principal Collective Agreement, this is little more than a "pious hopes" provision. If the three local unions are merged, then the operation of the Principal Collective Agreement cannot be applied on its face to the operation of the out of work list. This must be addressed to some extent, and does require the consent of the ECAO to amend the collective agreement.

## Disposition of these Applications

### *Statutory Context*

230. The Local Unions argued that the actions of the International Union violated subsections 151(2), 156, 161(3), 162(2) and section 73, as well as sections 147 and 149. The essence of the argument with respect to the first mentioned sections was an assertion that once the local unions had been designated as affiliated bargaining agents to the employee bargaining agency designated by the Minister of Labour under the Province-wide bargaining provisions of the Act, then they could not be merged with another local union without interfering with the their

bargaining rights or contravening the designation by the Minister. The complete answer to this argument is section 68 of the Act:

> **68.** (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application.

231. The merger of two or more local unions does not extinguish or invalidate any bargaining rights or any other right privilege or duty. The successor acquires all the rights, privileges and duties of the predecessors which continue in full force and effect. The fact that a collective agreement may need to be amended, or at the very least that the employer parties need to be advised of the merger, does not invalidate or interfere with any bargaining rights. It is for that reason that mergers have been effected and new local unions created by most multi-local unions in the Province that are subject to designation orders without once requiring unions to go to the Minister for a restatement of a designation order. The issue in those cases is how the merger occurred. There is no statutory bar to a merger, voluntary or otherwise.

232. The Local Unions also alleged a violation of section 76 (intimidation and coercion). They did not address that section in argument. There is no basis for that assertion. I find no violation of section 76.

233. All parties agree that section 147 and 149 are engaged by the allegations in these applications. They provide:

> **Jurisdiction of the local trade union**
> **147.** (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.
>
> **Notice**
> (2) The parent trade union shall give the local trade union written notice of an alteration at least 15 days before it comes into effect.
>
> **Determination of just cause**
> (3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:
>
> 1. The trade union constitution.
>
> 2. The ability of the local trade union to carry out its duties under this Act.
>
> 3. The wishes of the members of the local trade union.

> 4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.
>
> **Same**
>
> (4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.
>
> **Complaint**
>
> (5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter.
>
> …
>
> **Interference with the local trade union**
>
> **149.** (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected.
>
> **Same, officials and members**
>
> (2) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union.
>
> **Board powers**
>
> (3) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate.
>
> **Orders when just cause**
>
> (4) If the Board determines that an action described in subsection (1) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the local trade union.

234. The Board has analyzed these sections on a number of occasions and I refer to some of that case law below.

*Just Cause for Significant Structural Change or Merger*

235. I conclude that the International Union had just cause to take action with respect to the structure and quite possibly the existence of the Local Unions. It was confronted with two local unions that were content with the status quo simply because it provided enough work opportunities for its existing members and that could not or would not respond to the challenges that faced them.

236. The International Union concluded that the economy of the Province is changing. No party disagreed with that proposition. The International Union also concluded that the IBEW was obliged to change with it. The Local Unions failed to understand that the industrial base which made up the one subsector of the construction industry, where they had a reasonably dominant market share, is declining. The largest industrial project in each of the two areas was one automaker whose future, at least in each location, is not an absolute certainty. The two large nuclear plants are likely to remain a continuing source of work, however, in Local 894's area. The two Local Unions do not have any significant market share in the sectors that are most likely to be the greatest source of construction work in the future: commercial, institutional and residential work. Their organizing efforts in these areas appear to be unsuccessful. Whether this is because of each Local Union's lack of resources (as Mr. Armstrong concluded) or a lack of a culture of aggressive organizing (another conclusion Mr. Flemming came to) does not matter. The Local Unions have no solution. They say their organizers are working well, but have little in terms of results to show for it. Local 353 is addressing the issue of organizing these sectors much more aggressively. There is no guarantee that they will be successful. However they are prepared to try and have identified areas where their efforts might be directed.

237. The challenge presented by CLAC as a rival organization was lost on the two Local Unions. In Local 1739's area, CLAC has a larger share of the commercial market and is very close to the IBEW's position in the institutional market (10% to 13%). In addition, Local 1739 has lost large institutional contracts to non-IBEW contractors. The performance of large contracts with a hospital gives such contractors the expertise, skill, the reputation and the commercial strength to compete with the largest IBEW contractor. I note as well from Mr. O'Grady's figures that all industrial and residential contractors are from outside the area of Local 1739. The position of Local 894 is less drastic, but just as important. CLAC has a slightly greater share of commercial market then does Local 894. It does not appear to be significant in other markets, and Local 894's share of the industrial market is much greater than that of Local 1739.

238. However, neither Local Union has an adequate response to the changing environment. Mr. Gillett of Local 894 did not realize that CLAC was active in his area at all. Mr. Leduc simply blamed the presence of non--union and CLAC contractors in other locals in Toronto and in southwestern Ontario that failed to organize their employees (an activity he apparently did not contemplate in his area).

239. The results of this limited market share are evident. Most members of the IBEW living in the geographic jurisdictions of the Local Unions belong to Local 353. There is no reason to conclude that these electricians like to travel long distances to work any more than do the members of the Local Unions. Indeed, one must assume the reverse in the absence of any evidence. It is a valid conclusion to find that these individuals, except for perhaps some number who live in Pickering near the Toronto border, have concluded that their economic interests are better served by being members of Local 353. Both Mr. Gillett and Mr. Leduc expressed a fear that if all of the IBEW members living in their geographic areas were to be added to an out of work list that was in some way restricted to members living in the current areas of the two Local Unions, this sudden influx of new individuals to the list would mean that there were insufficient work opportunities for any of them to make a living. Those living in the areas of the Local Unions who are members of Local 353 had indeed "voted with their feet". Had they not done so, both Local Unions would be unable to supply sufficient work opportunities to permit any of their members to make a living.

240. Finally, the International Union was faced with the complaints of Toronto contractors about restrictions on their ability to take crews from Toronto into the area of the two Local Unions. While at least some of these contractors no doubt put in terms of the quality of the employees they received from each Local Union, the International Union did not share that view and did not act on that basis. Aside from what may be isolated experiences that get blown up into emblematic stories, there is no dispute from the Local Unions that having more mobile crews was a situation that was to the contractor's advantage. Certainly it represented an advantage to a greater extent than the cost of the travel and perhaps board allowance for those who travel from Toronto. In addition, the collective agreements of CLAC, considered a competitive problem by all the local unions, do not contain restrictions on mobility, nor of course do non-union operations. When the time comes that Toronto contractors will not bid on large projects in the Local Unions' areas (particularly that of Local 1739 where non-resident contractors perform the vast majority of the work) this is a problem that needs to be addressed.

241. The Local Unions argued a position that has been rejected by the Board since its first decision under sections 147 and 149: the assertion that a parent union is not entitled to act unless it can demonstrate fault on the part of the local union. In this case, the Local Unions would define "fault" very narrowly: for instance that they are not insolvent; they are capable of supporting their current (and in the case of Local 894, dwindling) membership; they are not at war with neighbouring locals; and to do the best they can with their existing resources.

242. This is an inadequate response to the reality in which the parties to these applications find themselves. The Local Unions and the parent International Union are not isolated and separate parties who deal with one another at arm's length. A member of the Local Union is a member of the IBEW. The Principal Collective Agreement contains provisions that require contractors based in other areas to hire and employ members of the Local Unions when performing work in their geographic area. It is a provincially negotiated agreement. The fact that the "non-resident" contractors are bound to a collective agreement that requires them to do so arises from organizing efforts by other unions and particularly Local 353. The restrictions on mobility are a function of the collective agreement. If all Local Unions were independent entities, the obligation to hire members of the two Local Unions would undoubtedly not be the same.

243. Similarly the International Union has an interest in preserving and enhancing the position of Local 353 and other neighbouring locals. Mr. Gillett and Mr. Leduc were prepared to blame Local 353 in particular and (for Mr. Leduc) the locals in southwestern Ontario for the presence of CLAC and non-union contractors in their area. It is equally legitimate for the International Union to be concerned about the effect on other parts of the Province of the non-union and CLAC contractors increasing their size, strength and reputation in the areas of the two Local Unions.

244. One of the factors that subsection 147(3) and 149(3) direct the Board to consider is the constitution of the union, although the Board is not bound by it. The right of an International Union to make changes in the local union structure under that constitution is not an answer to sections 147 and 149. The obligation to act only with just cause under these sections is an obligation on a parent union even though such a concept may be absent from the union's constitution. The recognition of the Constitution as a factor is a recognition of the fact that, where consensus is not present, and where an issue affecting the union as a whole must be addressed, then it is the international union, and only the international union, that has the

authority to act. The "just cause" standard is required of an international union when it must address a conflict or a serious issue that engaged its supervisory authority.

245. The Board has defined just cause by reference to the "justness" of the result rather than of any process. In *International Brotherhood of Electrical Workers,* [1996] OLRB Rep. Feb 70, the parent union was faced with a conflict between the Local 1788 and the other local unions in the Province of Ontario. Certainly there is no question that Local 1788 was well organized, functioned extremely efficiently, and handled its bargaining rights and obligations well. In that case there was a conflict between Local 1788 and the other locals about the boundary where the work done by Local 1788 members left off and work to be done by members of the other local unions commenced. The International Union acted to define where that boundary lay. The Board determined just cause at paragraphs 72 to 90 and concluded:

> 89. The nature of section 147 and the factors which the Board is directed to consider under it requires that the Board not limit itself to an examination of the parent union's conduct in the decision-making process, and the factors which it considered. It may be that a parent union can do everything wrong in that respect and still end up with a decision which is fair and reasonable in the circumstances. That is, the question is not: "Could a parent trade union, acting honestly and looking at the situation and circumstances as a whole, and weighing the interests of all concerned, have reached the conclusion and made the jurisdictional decision it did?" Instead, the question is: "Having regard to the evidence before the Board, does that parent union's decision yield a result which is fair and reasonable."
>
> 90. In a proceeding under section 147 the Board is limited to considering the four factors listed in subsection 147(3). The wording of section 147 taken as a whole also suggests that the Board's power is limited to determining whether there was just cause for the alteration of jurisdiction under scrutiny. The wording of the provisions stands in sharp contrast to that of subsections 149(3) and (4) (also part of Bill 80) which also require the Board to decide whether a parent trade union had just cause to interfere with the autonomy of a local trade union, or for removing local union officials from office, or changing their duties, but allows the Board to "consider such factors as it considers to be appropriate", and allows the Board to make whatever orders or directions it considers appropriate.

246. In applying the fourth paragraph of subsection 147(3) the Board stated at paragraph 95:

> 95. The second question relates to the broadest and most general factor which the Board is required to consider; namely, "whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems." This requires the Board to consider whether a legitimate collective bargaining purpose would be served by the alteration of jurisdiction which will not create significant labour relations problems; both as between the trade union entities involved, and as between those trade unions and their employer collective bargaining partners. It is important to consider the former not only because section 147 deals with what is fundamentally an internal trade union matter, but also because such questions also involve important issues of statutory rights, and generally

> have an impact on collective bargaining relations with employers (which is why the latter must also be considered).

and concluded at paragraph 102:

> Further, we are satisfied that changing Local 1788's jurisdiction back to what it was intended to be, and which for most of its history it was, will more probably than not facilitate viable and stable collective bargaining without causing serious labour relations problems.

247. The Board adopted this test in *United Brotherhood of Carpenters and Joiners of America,* [2001] OLRB Rep Mar/Apr 491. In that case, as in this, there was no conflict between the applicant (the Lake Ontario District Council) and other local unions but it was in a similar position to the Local Unions in this case. That council of local unions was not responding well to the institutional organizing challenges facing the union (paragraph 109 to 11). See also *International Union of Bricklayers and Allied Craftworkers,* [1999] OLRB Rep. July/Aug 621 and *International Union of Bricklayers and Allied Craftworkers,* [2004] OLRB Rep. Mar/Apr 193 and *United Brotherhood of Carpenters and Joiners of America,* [2009] OLRB Rep. Nov/Dec 972.

248. The four factors the Board is to consider under section 147(3) do not set out any weight to be attached to any of them nor are they the exclusive factors to consider. The section leaves the ultimate assessment to the Board. The members of both Local Unions are opposed to the merger. The ability of the Local Unions to carry out their duties under the Act, if defined in the narrowest of senses favours the two Local Unions. It is difficult to see, however, how that factor favours Local 894 with its declining membership, or Local 1739 that cannot staff large projects and has a tiny percentage of the local market, in the long term. The alteration will more likely than not in the long term facilitate viable and stable collective bargaining in that it will make it possible for the IBEW to respond to the challenges it faces in maintaining its bargaining strength through increasing market share, and will likely make it possible for the Union to address, though not necessarily entirely, the restrictions on the ability or the willingness of certain large contractors to bid work in the areas of the two Local Unions. Finally the International Union is the only party with the constitutional ability to address the challenges that face the Local Unions.

249. I find, therefore, that the IBEW had just cause under section 147 and 149 to make significant structural changes to the Local Unions to address the concerns of the IBEW as a whole and that those of structural changes may well have been a merger of the three local unions. The challenges facing the two Local Unions represented a clear danger to the future of the Local Unions themselves and the IBEW as a whole. The Local Unions could not or would not rise to the challenges before them and the International Union was required to act.

### *Implementation*

250. The terms of the merger that were imposed by the International Union have certain defects. Once again the Local Unions sought to apply the "natural justice" standards that a court would apply to an administrative tribunal. The analogy is not an apt one. The International Union is not a third party adjudicator or a licensing authority dealing with applicants who assert they are entitled to apply for certain permissions or licenses. Courts have used the analogy of

contract law in analysing the relationship of members to their unions and, the relationships among different components of the Union.

251. An International Union in this case chose to act unilaterally and impose changes with no consultation with the Local Unions involved. It may do so. However, if it does proceed in that fashion, it runs the risk of making mistakes because it does not have all of the facts before it when it makes its decisions. There are a number of problems with the merger that the International Union has ordered. Had it sought the views of the Local Unions, not simply on the issue of merger or other structural change but also the issues of how that change was to be effected and any problems or complications that might arise from any proposed course of action, those problems might have been avoided. The time devoted to the Implementation Meetings could just as easily have been used to discuss what the International Union proposed to do before it made a final decision.

252. The International Union offered no reason as to why it did not at least send a copy of the Armstrong Report to the Local Unions and ask for their comments. It may be that there is no option other than merger. The need for a single source of decision making about key issues of the operation of the allocation of work opportunities through the administration of the hiring hall, organizing non-IBEW electricians and operating the stabilization or market recovery funds are, at this point, obvious. The Local Unions' case in these applications was one of total opposition to any changes, a resistance to any issue raised by the International Union and an exclusive focus on the potential harm to the members of the Local Unions. Litigation where the stakes appear to be all or nothing is not much of a setting for discussion, debate or compromise. Whether there are structural changes other than merger is not apparent to me. Had there been discussions between the International Union and the Local Unions as to the issues of the International Union, Mr. Armstrong's Report, and the concerns of contractors being expressed to the International Union, another solution might well have emerged. Simply because it is not apparent to the Board at this point, does not mean that it may not exist.

253. The implementation meetings were not structured to foster that type of discussion. The decision to merge had already been made. The International Union expected resistance and opted for a speedy imposition of its desired solution. Indeed the Local Unions were unable to respond in a coherent manner until a day after the meetings scheduled by the International Union, and their proposals on their face do not appear to have been responsive to the real issues.

254. Even within the context of a merger, the speed with which the International Union was determined to proceed and the lack of effective consultation meant that the International Union did not have the necessary facts and therefore did not address the following very real issues:

> *Trust Funds*:
> The International Union lacked the facts necessary to make decisions to make options available to members of each of the trust funds. I have indicated above the questions that remain unanswered about even the pension funds. Specifically the merger does not address or even acknowledge the issue of the retiree benefit for members of Local 894 and what the cost of eliminating or carrying it would be.

*Organizing*:
This is a fundamental issue in the International Union's estimation. They were content to leave the organizing efforts to Local 353 and obtained no commitments or strategic plan to organizing in the area of the former Local Unions. What, if anything, was necessary was never addressed.

*Out Of Work Lists*:
As indicated, the International Union's solution clearly protected the interest of members who did not wish to travel far to work. It does not address the issue of the possibility of a Toronto contractor who may have an erroneous impression of the workmanship of members of either of the two Local Unions and might "bulk up" in Toronto before taking a job in Barrie or Oshawa. Mr. Flemming repeated in evidence a statement set out in his will-say statement (paragraph 42): "... in my experience, companies will not want to pay the extra costs [associated] with bringing existing Local 353 members - travel and room and board - *if they can find and rely upon local trades persons*. There will continue to be an economic incentive to employ IBEW members who live in the area." [my emphasis] The question is: how they will "find and rely on local trades persons" if it is their preference not to do so? As the Local Unions pointed out, in his report to the Plumbers' Union (the United Association), Mr. Armstrong proposed a transitional or phasing in of such changes to hiring hall and dispatch systems to ensure that members in some areas were not isolated and excluded from work opportunities. With all due respect, a general power granted to Mr. Flemming to ensure fair and equitable treatment of members of Local 894 and 1739 with respect to job opportunities is not sufficient. It is not practical or possible for the International Vice President for Canada to run the Local 353 hiring hall. Protection and opportunity, even if only temporary, need to be discussed.

*Two Local Unions*:
With some justification, the International Union treated both of the Local Unions in the same manner. Indeed both Local Unions present the same unwillingness or inability to see the existential problems that they face and have no real strategy other than to continue to do what they were already doing. Local 894 may be in a somewhat better position because of the existence of the two large nuclear plants in its area. Local 1739 is in a far more fragile state, although its membership is growing and Local 894's is shrinking. Local 1739's membership is very small, its market share is negligible, and one wonders how it can continue to function at all. Whether or not this requires a different response or different action within the existing structural realignment or in terms of how a merger is effected is a matter that needs to be addressed with the two Local Unions. There may not need to be any distinction drawn between the two of them, but the issue should be least addressed.

**Remedy**

255. In argument both the International Union and the Local Unions maintained their absolutist positions. The International Union argued that if the Board concluded that it had just cause to effect a merger, any details about the manner in which it did so did not matter since the end result was one that was just and appropriate. The Local Unions argued their case as if it were a plea made under one of the 19th century causes of action in which one error on the part of the International Union resulted in complete success for the Local Unions. Neither position is appropriate and neither is responsive to the obligations of the Board under section 147 and 149.

256. The Trustees of the Local 894 trust funds took a different approach. They adopted the Local Unions' submissions asking that the applications succeed and the relief sought be granted. In the alternative, they relied on subsection 149(4) and asked the Board to require the International Union to address the issues (at least with respect to the trust funds) and to consult with the Local Unions and their members. They submitted that the Board should stay the merger until the parties agree among themselves on a resolution, provided that this resolution was acceptable to the Board. If these discussions were not successful, the Board should give the parties the right to come back and argue what should be done if there is no resolution. The Trustees asked the Board to remain seized for the purpose. Neither of the two major parties commented on this approach.

257. This is, with some variation, the most appropriate solution to these applications. Given the number of issues involved and the potential amount of information necessary, this is not the time for the Board to make any final order about what is to be done.

258. Therefore the Board makes the following declarations and orders:

(i) The Board finds that the International Union had just cause to make significant and substantial structural changes to the two Local Unions. At the very least, this would mean a single source of decision making about key issues of the operation of the allocation of work opportunities through the administration of the hiring hall, organizing non-IBEW electricians and operating the stabilization or market recovery funds. No alternative to merger with Local 353 is evident at this time.

(ii) The International Union is directed to meet with Local 894, Local 1739, and Local 353 jointly, separately, or in any combination that is appropriate to discuss the following issues:

(a) Are there any alternatives to merger?

(b) What temporary or permanent features, if any, of the out of work list, dispatch system and hiring hall provisions are necessary to ensure equal opportunity of employment for members of Local 1739 and Local 894?

> (c) What temporary or permanent structures need to be created to ensure that organizing efforts are conducted in the geographic areas of the two Local Unions?
>
> (d) What changes are needed to the Principal Collective Agreement to give effect to any change agreed upon?
>
> (e) What changes, if any, must be made with respect to the pension and the Health and Welfare trust funds and benefit plans established under them?
>
> (f) What, if any, commitments or objectives must be identified for the operation of the one or more stabilization funds that will exist?

259. These discussions should commence as soon as possible and should be concluded on or before March 31, 2012 (unless all parties agree to an extension of time). If there is no resolution at that time, the parties may return to the Board to make submissions about what the Board ought to do at that point, and specifically if there are any orders that ought to be made pursuant to subsection 149(4).

260. In the event that it is required, the Board sets Monday, April 16, 2012 as a date to hear at that time the parties' submissions as to what the Board should do. If that date is inconvenient to any party, that party shall canvass the other parties for a common date and advise the Board within the next two weeks. Any date after April 16, 2012 is likely open to the Board. If it would be of assistance to the parties, the Board will endeavour to assign a Vice Chair other than this panel to assist the parties to reach a resolution. If that is not possible (and it may not be) this matter will proceed on April 16, 2012 or such other date as the parties agree on.

261. I remain seized to deal with any issues that arise in these applications.

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**1624-10-ES; 1650-10-ES; 2368-10-ES Kashruth Council of Canada/Le Conseil Cacherout du Canada**, Applicant v. Morley Rand and Director of Employment Standards, Responding Parties; Morley Rand, Applicant v. Kashruth Council of Canada/Le Conseil Cacherout du Canada; Director of Employment Standards, Responding Parties; Michael Rand, Applicant v. Kashruth Council of Canada/Le Conseil Cacherout du Canada; Director of Employment Standards, Responding Parties

**Employee – Employment Standards – Reprisal – In cross-appeals of three decisions of an ESO, the threshold issue was whether the employees were holders of "religious office" and therefore excluded from the protections of the *Employment Standards Act* by virtue of s. 3(5)7 – The employer is a not for profit organization which exists to guide the observance of Orthodox Jewish Kosher dietary laws in Canada; the employees worked as 'Mashgiachim' kosher food inspectors – The Board held that while the 'Mashgiachim' is a religious position that does not determine whether these specific employees held a religious 'office' – There must be more to be a religious 'office holder'**

**than mere characterization of such or that the functions or work that individual performs are significant or important to fulfill religious obligation or ritual – No evidence was tendered that the employees in question had any specific education, training, certification, or qualifications other than passing an interview and being Shomer Shabbat – Looking at other exemptions to provide context, the Board found that the essential feature of the holder of an 'office' is independence – The employees in this case did not have any greater independence than other non-religious food inspectors – The relationship in this case resembled a traditional employer/employee relationship; the exemptions are to be construed narrowly – The Board held the employees were not religious office holders and therefore not exempt – Matter continues**

***APPEARANCES***: *Israel Balter, Joy Spitzer* and *Rabbi Tvsi Heber* for Kashruth Council of Canada/Le Conseil Cacherout du Canada; *Morley Rand; Natasha Wilson* for Director of Employment Standards.

**BEFORE:** Brian McLean, Vice-Chair.

**DECISION OF THE BOARD**: November 8, 2011

1. These are applications for review by an employer of Orders to Pay issued by an Employment Standards Officer and by individuals, the Rands, of the amounts of the Orders and the ESO's failure to find there was a reprisal against them. The Board held a hearing on July 25, 2011 to receive the evidence and arguments of the parties with respect to one issue which is common to all of the applications. That issue is whether the individuals (Morley and Michael Rand), who were the beneficiaries of the Orders to Pay, are holders of "religious office" and therefore excluded from the protection afforded by the *Employment Standards Act, 2000*, (the "Act") by virtue of section 3(5)7 of the Act. This decision determines that issue.

2. The applicant, Kashruth Council of Canada is a not for profit organization which exists to guide the observance of Orthodox Jewish Kosher dietary laws in Canada. The main objectives of the Council are to ensure the availability and identification of Kosher products through Kashruth (Jewish dietary law) supervision and certification of food service production and manufacturing businesses to provide and encourage the production, distribution and use of kosher food products and services; to promote awareness amongst consumers about the use of kosher products, publicize the importance of some products in Jewish observance and to identify for consumers which products meet the traditional standards of kashruth. One of the ways that the applicant attempts to achieve these goals is to employ several kosher food inspectors who are referred to by the Hebrew name Mashgiachim ("supervisors"). The Mashgiachim supervise hundreds of industrial food establishments, which produce over 45,000 Kosher food products and 140-150 food service providers in the Greater Toronto area (restaurants, caterers, synagogues, etc.).

3. The following excerpts from *Ferman Shaliehsabou v. Hebrew Home of Greater Washington, Incorporated* (United States Court of Appeals for the Fourth Circuit) (April 2, 2004) describe the importance of kosher dietary laws in Orthodox Jewish life and the role of the Mashgiach in those laws. Although the Court's comments are made in the context of a Jewish Home for the Aged (the "Hebrew Home") they apply equally to the facts before me.

Consistent with its mission to serve the spiritual needs of its residents, the Hebrew Home abides by the "halakha." Halakha "is the overall term for Jewish law" and literally means "the way on which one goes." Rabbi Hayim Halevy Donin, *To Be a Jew. A Guide to Jewish Observance in contemporary Life* 29 (1972). It is "the Jewish way for securing and perpetuating the Jewish way of life." *Id* at 32. In accordance with this guiding precept, the Hebrew Home provides its residents kosher meals prepared in accordance with the Jewish dietary laws, which are collectively known as the "kashruth." *Id* at 97. As part of the halakha, "the Jewish dietary laws prescribe not merely a diet for the body but a diet for the soul as well, not so much a diet to maintain one's physical well being as a diet to maintain one's spiritual well-being."*Id* at 98. In other words,

> The faithful Jew observes the laws of kashrut[h] not because he has become endeared of its specific details nor because it provides him with pleasure nor because he considers them good for his health nor because the Bible offers him clear-cut reasons, but because he regards them as Divine commandments and yields his will before the will of the Divine and to the disciplines imposed by his faith.

*Id.* at 98.

. . .

Rabbi Kalman Winter, Director of the Vaad, explained the role of the mashgiach in a declaration made in connection with this case. According to Rabbi Winter, mashgiachim are "supervisors" who "are qualified under Judaic law to supervise the preparation of food to ensure that it is kosher." (J.A. at 109.) Mashgiachim, according to Rabbi Winter, "must have a knowledge of the basic laws of kashruth" and "must also be a Sabbath observer and be a fully observant Jew." (J.A. at 110.) Such persons "generally have obtained their knowledge of the laws of kashruth through experience and study at a 'yeshiva.'"[3](J.A. at 111.) Moreover, according to Rabbi Winter, mashgiachim "possess the authority to enforce the laws of kashruth and make on-the-spot decisions based on their knowledge and understanding of the situation at hand." (J.A. at 111.) Rabbi Winter stated that complying with kosher dietary laws "is an integral and essential part of Jewish identity." (J.A. at 109.)

. . .

. . .

"basic responsibility [at the Hebrew Home] was to guard against any violations of Jewish dietary law." (J.A. at 115.) Pursuant to that end, Shaliehsabou's "primary duties" included "inspecting deliveries," "opening and closing the refrigerators to insure the integrity of the kosher status of the kitchen," "insuring that all meat and dairy products were stored and kept separate during food preparation," and "lighting all ovens and heating equipment in accordance with the requirements of Jewish law." Shaliehsabou would also cleanse kitchen utensils and other items if they became non-kosher. Shaliehsabou had the ability and the duty to instruct the kitchen staff on complying with the kashruth and to report any violations. He was "the liaison between the Home and the Vaad on matters of Jewish dietary law." Shaliehsabou was unsure who was his direct employer and was told by the general manager of Sodexho, "[w]ith a rabbi's questions, go

> to rabbinical, and for any other issues you have, just come to [food services]."

4. There are 3 requirements for food to be Kosher:

   1. all ingredients are Kosher;
   2. the equipment used for production is initially "Kosherized" and used exclusively for Kosher food use; and
   3. it is prepared and cooked in the way required by Kashruth.

5. The Council is run by Orthodox Rabbis and lay representatives of the community.

6. A person becomes a Mashgiachim by applying for the position and passing an interview at the Council. Mashgiachim generally have a Jewish education and must be able to provide references from Orthodox Rabbis.

7. The Orthodox Jewish community places a high degree of trust in the Council's Mashgiachim to ensure the food consumed by the community is kosher. Food providers who submit to the inspection process are permitted to display the "COR" symbol on their product which tells the public that the product is safe to eat for Kosher observant people. Such food companies are contractually obligated to follow the direction of the Mashgiachim. The Mashgiachim are the face of the Council in the community.

8. Broadly speaking, the Council's inspection activities are divided into two branches: an industrial/commercial branch and a catering branch. The Council's Mashgiachim generally, but not exclusively, work in either of the two branches. The Mashgiachim in each branch are overseen by a deputy rabbi, one of whom is in charge of each branch. According to Rabbi Huber, the Mashgiachim in each branch "report" to the Rabbi in charge of the division.

9. When a company initially seeks to be permitted to be certified "kosher" there is an initial inspection usually done by the Council Rabbis to determine if it is an appropriate candidate. Mashgiachim are usually not part of this initial inspection process.

10. The Rands are father and son. In accordance with the requirements to be a Mashgiachim, they are both Orthodox Jews who observe the Sabbath according to Orthodox Jewsih tradition (Shomer Shabbat). The issue in this case is: are the Rands holders of a religious office?

11. Morley Rand testified that most of his work was in the industrial/commercial field where he inspected two food production plants that bottled cooking oil. He was also the usual Mashgiach for the Copper Creek Golf Club when it was rented and catered for Jewish weddings, bar mitzvahs and other functions. He was present performing his duties at the golf club for 20-25 functions a year (40-50 days). He also occasionally worked at other commercial companies and banquet sites when directed to do so by the Council. Michael Rand was the Mashgiach for certain kosher catering halls.

12. Morley Rand testified that he inspected the industrial food producers by attending at each of the facilities on a daily basis. While at the facility he ensures, in the case of food production that have a kosher and non-kosher section (as there may be), that food from the non-

kosher section is not being moved to the kosher section and that the company is otherwise engaging in the correct processes to maintain its kosher status. For example he might look to ensure that cooking oil is being pumped from the right railcar to the correct tanks. He also assures the labelling is accurate.

13. During inspections issues may arise as to the correct procedure to ensure the product is kosher. Mr. Rand testified that he seldom determined those issues on his own, but called a Rabbi at the Council for advice. He also engaged in this process if there was ever a dispute with the upper management of the company as sometimes occurred. Disputes are usually resolved between management of the Council and the client's management.

14. Mr. Rand, on rare occasions, has to "Kosherize" new equipment or equipment that was previously used for non-kosher purposes. Kosherizing involves cleaning, a waiting period and then the recitation of blessing.

15. Mr. Rand testified that he is only at the client's premises for 45-50 minutes every day. There is therefore the risk that improper things will happen in his absence. Accordingly, he takes care to speak with employees to find out what has been going on in his absence and may provide them with gifts to reward their assistance.

16. Mr. Rand's functions at the Copper Creek Golf Course were somewhat different. The golf course holds both kosher and non-kosher events. Therefore, the duties of the Mashgiachim are more involved than those at the industrial food establishments. The Mashgiach will spend as many as three days at the golf course in connection with this particular event. So if the event occurs on a Sunday night, the Mashgiach may attend for food preparation Thursday and Friday and will stay for the entirety of the event on Sunday. He is paid $20.06/hour for his work which amount is billed by the Council to the golf course.

17. At the start of the process at the golf club, the Mashgiach ensures the kosher kitchen and dinnerware has remained sealed since the last kosher event. The Mashgiach then engages in ritual blessings to allow the cooking process to begin. The Mashgiach inspects all of the food to ensure it is appropriate and the vegetables to ensure they are free of insects. He inspects the cutlery, pots, pans and dishes.

18. On the night of the occasion, the Mashgiach watches the food preparation and inspects the food service. He remains until the end of the evening so that he can inspect the cleaning and sealing of the kitchen so that it will remain kosher for the next event.

19. I am not required as part of this preliminary decision to determine the merits of the Rands' claim for unpaid wages. If the Act is found to apply to them those issues will be determined at other separate hearings. Nevertheless, there is no dispute that the Council sent certain letters to the Rands and I am satisfied the contents of those letters are relevant to my determination. I set out a representative sample of the letters.

> February 8, 2010
>
> Dear Mr Rand:
>
> I hope that this letter finds you well.

We have recently heard from two different sources that you are saying things, in public, that are both harmful and detrimental to your employer, Kashruth Council of Canada.

Please be advised that there will be no tolerance for any type of slander, bad-mouthing or deceitful practices such as referring our clients to other kashrus agencies.

Should we determine that you do not display loyalty to your employer by acting in this manner, we will have no choice but to terminate our relationship and with due cause.

Sincerely yours,

Rabbi T Heber
Director of Kashrus, Foodservice Division

February 9, 2010

Dear Mr Rand:

I hope that this letter finds you well.

This letter is to inform you that, in interest of consistent implementation of kashrus policies, we have decided that no single employee shall have an exclusive assignment to one specific banquet hall or event venue. We will operate by alternating employees between event venues.

Employees will continue to receive assignment only through our office. Employees shall not arrange to supervise an event venue without express permission from our office.

As per the above, we would like to inform you that as of July 31, 2010, you will no longer be the exclusive Mashgiach assigned by our office to Copper Creek Golf Club.

Please feel free to contact me if you have questions or concerns.
Sincerely yours,

Rabbi T Heber
Director of Kashrus, Foodservice Division

Memorandum

DATE: March 8, 2010
FROM: Rabbi Tsvi Heber
TO: Morley Rand
RE: Your Accountability

I acknowledge receipt of your letter of February 26, 2010.

I wish to remind you of the following:

1. You have an obligation as an employee of the Kashruth Council to account for your conduct. We have been informed by a number of our clients that you have been disparaging us. If these assertions are true, then it would be a violation of your duty of loyalty that you owe to your employer. We have a right to seek an explanation as to whether these allegations are correct and if so, why you would have acted in this fashion.

2. Every employer is entitled to ensure that his employee's conduct conforms to its standards. If an employer learns of behaviour that is incompatible with those standards, he has a right to enquire into and, if necessary, discipline the employee for such misconduct. This does not constitute libel or slander.

3. The reality is that notwithstanding your denials, we have received two reports from two caterers about the comments that you have made. One caterer advised that you had been disparaging the Kashruth Council, your employer, to the effect that we do not know what we are doing. The caterer informed us that he did not understand how an employee could speak about an employer in this fashion and "stab their employer in the back". The other caterer advised that you had recommended them to use Badatz, rather than your employer.

   The statements that you have made are a violation of your duty of loyalty to your employer. These inappropriate comments cause us reputational damage, which cannot be easily repaired. In addition, your denials show a lack of candour in accounting for your conduct. You have a duty to be truthful and forthcoming when asked about your behaviour.

   We warn you that any further disparaging comments made about your employer or lack of candour in accounting for your conduct will lead to further discipline up to and including termination of your employment for just cause.

4. Your response to our enquiries about the reports of your disparaging comments has been to challenge your employer and to threaten me, as your manager, with the spectre of a lawsuit. This behaviour constitutes insubordination and if it persists, amounts to grounds for termination

What we would expect from you is a complete and unconditional written retraction of the threat as set out in your letter of February 26, 2010 no later than March 12, 2010 at 12:00 p.m., falling which you will be subject to discipline up to and including termination of your employment for just cause.

DATE: April 9, 2010
FROM: Rabbi S. Adler, Rabbi T. Heber
TO: Mr. Morley Rand
RE: Compliance With Suspension

In our memorandum of March 19, 2010, we advised you that in light of your refusal to withdraw your threats to sue your employer and Rabbi Heber, you were being placed on an unpaid suspension from April 12, 2010 up to and including April 14, 2010. We directed you not to attend at work.

We have been informed by Rabbi Norman that you have advised him that you intend to ignore the suspension and to attend at work next week at Bungee and Hubbert as usual.

We wish to emphasize that the suspension is a directive to you not to attend at work. Arrangements have been made for another Mashgiach, Rabbi Asher Vale, to perform the services on the days of the suspension. Should you violate this directive and nonetheless attend at the premises, you will be escorted off. Furthermore, you will be subject to further discipline up to and including Termination of your employment for just cause.

We urge you comply with this directive.

Yours truly,

Kashruth Council of Canada

| | |
|---|---|
| Rabbi S. H. Adler<br>Kashrus Administrator | Rabbi T. Heber<br>Director Food Service Division |

DATE: March 19, 2010
FROM: Rabbi S. Adler, Rabbi T. Heber
TO: Mr Morley Rand
RE: Your Continuing Threats and Insubordination

In our memorandum of March 8, 2010, you were informed that your threats to sue your employer and Rabbi Heber personally, were intolerable and constituted insubordination. You were given a deadline of Friday, March 12, 2010 at noon to withdraw your threats. This deadline has come and gone and we have not heard from you.

Your insubordinate conduct is unacceptable and must cease immediately. All communications regarding your employment are to be directed exclusively to us and to no one else. Furthermore, we will not tolerate any further threats on your part

In light of your failure and refusal to withdraw your threats, you are hereby placed on unpaid suspension and are directed not to attend at work from and including Monday, April 12, 2010 to and including Wednesday, April 14, 2010, which is when you return from your Holiday. This suspension will be lifted if you withdraw your threats in writing prior to March 24, 2010.

Should you persist in your misconduct including refusal to withdraw your threats and continuing to level threats against your employer, you will be subject to further discipline up to and including termination of your employment for just cause.

Please be reminded that any type of replacement scheduling for your work, both during the suspension and at any time prior thereto or thereafter, is to be conducted through our office only. You are not to take any steps whatsoever with regard to appointing or scheduling replacement employees for your work unless you are specifically requested in writing to do so by one of us. Any steps taken by you in this regard without our specific written authorization and direction constitutes insubordination on your part and may result in disciplinary action against you including without limitation immediate termination of your employment for cause.

Morley, please treat this communication with the seriousness that it deserves. Your continued employment is at stake.

DATE: April 19, 2010
FROM: Jay Spitzer, Rabbi T. Heber
TO: Mr. Morley Rand
RE: Your Status

We note that you have just come out of a suspension for three days for having failed to withdraw your threat of a defamation lawsuit as against Rabbi Heber, and the Kashruth Council, your employer. We have warned you that your continuing threats are incompatible with your continued employment, constituted insubordination and could lead to your dismissal for just cause.

On April 15, 2010, we directed you to attend at a meeting at our offices. On Friday, April 16, 2010 we again directed you to attend a meeting at our offices on Monday, April 19, 2010 to discuss your situation. You declined both directives, claiming that you had advice from the Ministry of Labour not to meet or have any contact with your employer. This reasoning has no basis at law or in fact. As your employer, you have an obligation to account to us for your conduct as an employee and to follow all directives including meeting with us as required.

In addition, you have been contacting members of the Board of the Kashruth Council about your situation. You have threatened to report one Board member to his professional body for purportedly engaging in illegal practices. Not only is this allegation untrue it constitutes harassment and must cease immediately. You are to refrain from any kind of contact with any Board members and to confine your communications to the undersigned. Any future violations of this directive will lead to further discipline up to and including termination of your employment for just cause.

Your memo of April 18, 2010 simply confirms that you are continuing with your unacceptable conduct. The Kashruth Council will not withdraw its warnings to you to retract your threats as against Rabbi Heber and your employer. We emphasize that your continuing refusal to comply with our directives amounts to insubordination and will not be tolerated.

DATE: April 20, 2010
FROM: Jay Spitzer, Rabbi T. Heber
TO: Mr. Morley Rand
RE: Your Attendance at Hubbert's and Bungee

In our memo to you of April 19, 2010, a copy of which is enclosed, you were informed of your period of suspension from your duties and the directive that you refrain from attending at your scheduled workplace during this period.

We have been informed that you have violated this directive, attended at Hubbert's Industries and signed in.

We have reached the end of the line with your disregard of our instructions to you. We remind you once again that you are not to attend at any workplace in which you are otherwise scheduled during your suspension. Should you do so, you will be terminated immediately for just cause.

Yours truly,

| | |
|---|---|
| Kashruth Council of Canada | |
| Jay Spitzer | Rabbi T. Heber |
| Director of Operations | Director Food Service Division |

April 23, 2010

Morley Rand
611-3636 Bathurst Street
Toronto, ON
M6A 2Y5

Dear Mr. Rand:

You have been warned repeatedly that your continued employment relationship was no longer viable in light of your flagrant insubordination and threatening behaviour. Regretfully you have not taken the steps to redress this relationship despite the numerous opportunities afforded to you.

This letter serves to confirm that, effective immediately, your employment with the Kashruth Council of Canada is terminated for just cause including, but not limited to, continuing and flagrant insubordination in your threats of a defamation lawsuit against Rabbi Heber and your employer; refusing to withdraw your threats of litigation; attending at client sites, contrary to our directives; refusing to attend meetings called by management; refusing to follow the policies and directives of the employer, harassing and threatening members of management and the board; and disparaging your employer and encouraging its clients to use other kashruth services.

Your accrued wages and vacation pay, if any, will follow under separate cover.

Yours very truly,
Kashruth Council of Canada

Director of Operations

20. Rabbi T. Heber testified for the Council. He gave evidence, which was not disputed, and is generally discussed above, about the importance of Mashgiach in the lives of Orthodox Jews. The Mashgiach is trusted and must be trusted to perform his duties faithfully.

21. Rabbi Heber testified that the Mashgiachim have an obligation to correct issues at Kosher functions even if the Mashgiach is not the Mashgiach for that function. He had observed

Morley Rand do this at synagogue where Mr. Rand was attending to worship and was not present in his capacity as a Mashgiachim. This was disputed by Mr. Rand.

22. Rabbi T. Heber also testified that an impartial Rabbi, Rabbi Moshe Feinstein, who is the leading Orthodox Jewish authority on the Halakha, wrote in a Hebrew text that Mashgiach is a religious office in Judaism. Rabbi T. Heber noted that these commentaries are, in a sense, like the common law in Canada, authorities which interpret Jewish laws. However, Rabbi Feinstein's commentary was not put into evidence either in Hebrew or English translation.

**Decision**

23. The Act guarantees certain minimum terms and conditions of employment for almost all provincially regulated Ontario workers. Section 3(5)7 of the Act states that the Act does not apply to a "holder of political, religious or judicial office".

24. Much of the applicant's argument was on the religious aspect of the Mashgiach position. I agree with the applicant. The Mashgiach is a religious position – the Mashgiach has no duties other than to ensure that that the inspected food is Kosher. He has no duties that do not serve a religious purpose.

25. However that is not the end of the matter. The Board must still determine whether the Rands were holders of a religious "office". Little of the applicant's arguments and evidence relate to this point.

26. As benefits conferring legislation the *Employment Standards Act* is to be given such "fair large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to the true intent meaning and spirit" (*Interpretation Act*).

27. As the Supreme Court of Canada said in *Rizzo v. Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27:

> …
>
> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
>> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow*

> *Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.
>
> 22 I also rely upon s. 10 of the Interpretation Act, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".
>
> 23 Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the ESA, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.
>
> 24 In *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also Wallace v. United Grain Growers Ltd., [1997] 3 S.C.R. 701). It was in this context that the majority in Machtinger described, at p. 1003, the object of the ESA as being the protection of ". . . the interests of employees by requiring employers to comply with certain minimum standards, including minimum periods of notice of termination". Accordingly, the majority concluded, at p. 1003, that, ". . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not".
>
> 25 The objects of the termination and severance pay provisions themselves are also broadly premised upon the need to protect employees. Section 40 of the ESA requires employers to give their employees reasonable notice of termination based upon length of service. One of the primary purposes of this notice period is to provide employees with an opportunity to take preparatory measures and seek alternative employment. It follows that s. 40(7)(a), which provides for termination pay in lieu of notice when an employer has failed to give the required statutory notice, is intended to "cushion" employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment. (Innis Christie, Geoffrey England and Brent Cotter, Employment Law in Canada (2nd ed. 1993), at pp. 572-81.)

28. Consistent with the *Interpretation Act*, exemptions to the ESA are to be interpreted narrowly. See, for example, *Todd Grier Excavating*, 2009 CanLII 33900 (ON LRB). With these ideas in mind, I interpret what it means to hold a religious "office".

29. The Director was the only party to put before me a case regarding the meaning of the word "office". That case is from the Employment Appeal Tribunal of the UK, *102 Social Club and Institute Ltd. v. Bickerton*, [1977] I.C.R. 911. The decision concerned whether a club

secretary was an employee or whether he was an "office holder" and was made in order to determine whether he had a right not to be unfairly dismissed. The Tribunal stated:

> ...
>
> It seems plain that in this sense the secretary, just as much as the president, vice-president or treasurer held an office. Curates in the established Church and ministers of religion are not normally regarded as being employed: In re National Insurance Act 1911 119121 Ch. 563 and In re Employment of Ministers of the United Methodist Church 1119121 107 Li. 143. Nor are officers of the Salvation Army: Rogers' v. Booth [1937] 2 All E.R. 751.
>
> ...
>
> Returning to the facts of the present case, it seems to us in the light of the authorities, and the arguments upon the hearing of the appeal, that the main question is: was the secretary merely a member of the club who had done extra work for it and received, by virtue of his office, a payment as a solatium for the inconvenience; or was he as member who had agreed to become the paid employee of the club'? We consider that in answering this question the important pointers are these:
>
> (1) The payment made to the secretary; was it an honorarium (*Shorter Oxford English Dictionary* (first meaning) "an honorary reward") or was it a salary? In *Rogers v. Booth* [1937] 2 755, Sir Wilfrid Greene M.R. said of the Salvation Army officer who had claimed under Workmen's Compensation Act.
>
> The circumstance that a monetary sum is paid to officers who enter into this relationship is, in my opinion, quite insufficient to change the relationship from what it otherwise would be. It is quite obvious that, if officers are devoting the whole of their lives to this service, the Army would make provision to maintain them, and that it in effect does. But that does not mean that the sum which is paid has any similarity to wages or salary, or any payment given contractually for services given or for services rendered. It is a maintenance payment, to enable them to carry on the work that they have undertaken. It appears to me, therefore, that the appellant cannot establish, not merely a contract of service, but also any contractual relationship at all which could possibly be-come a contract of service or be a contract of service, and, in my opinion, the appeal fails on that ground."
>
> So the question is whether the payment was made contractually for the services, and whether the services were rendered in return for the payment, or whether it was a mere grant or solatium.
>
> (2) The tribunal may wish to consider whether the payment was fixed in advance, possibly on a periodical basis, or whether it was voted at the end of the year in token of the members' work. the former arrangement would flavour the view that the payment was a salary, the latter that it was not: though neither would be conclusive.
>
> (3) It is material to see whether the arrangements confer upon the secretary a right to payment or whether what is paid is a mere bounty.

> (4) The size of the payment.
>
> (5) Whether he is exercising the functions of an independent office (somewhat in the way that a curate or a police officer does) or is subject to the control and orders of the club.
>
> (6) The extent and weight of the duties performed; the smaller they are the less likely he is to be an employee.
>
> (7) The description given to the payment in the minute or resolution authorising it, and its treatment in the accounts, and for tax and national insurance purposes.

30. I rely on *102 Social Club* case with caution. It is clear, while purporting to give a broad definition of the word "office", the decision was made with an eye to the facts of the case before the tribunal and to holders of positions in clubs/organizations generally. It therefore has limited application to the facts at hand.

31. The main case relied on by the applicant, *Shaliehsabou v. Hebrew home of Greater Washington, Incorporated* (United States Court of Appeals 4th circuit April 2, 2004), although dealing with a similar issue, is also not especially helpful. That case dealt with a Mashgiach at a Jewish Home for the Aged. Shaliehsabou, the Mashgiach for the home, was the Mashgiach charged with ensuring that the food provided by Sodexho, a third party food services provider, was kosher. The case before the Court was about whether the *Fair Labor Standards Act* of 1938 applied to Mr. Shaliehasabou or whether he was exempted by the "ministerial exemption". In deciding that Shaliehasabou was covered by the ministerial exemption, the Court discussed various other decisions which made it clear that the ministerial exemption to the *Fair Labor Standards Act* is much broader than that contained in the ESA. For example, United States Courts have found that a Director of Music Ministry at a Catholic Cathedral, a choir director, and a Church Communications Manager were "ministers" for the purposes of the exception. The Court in Shaliehsabou states, "as a general rule, if the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she would be considered clergy" (p.10) and thereby excluded from fair wage protection. I note that there appears to be no requirement for the ministerial exemption in the United States that the individual in question "hold an office". The Court in Shaliehsabou stated:

> ...
>
> We cannot see any meaningful distinction between Shaliehsabou and the music ministers at issue in Diocese of Raleigh and Starkman or the communications manager in Alicea-Hernandez. First, Shaliehsabou's duties required him to perform religious ritual. He supervised and participated in religious ritual and worship. Shaliehsabou was responsible for starting and kosherizing the ovens and cleansing kitchen utensils in accordance with the rules of kashruth. He also oversaw the preparation of kosher food, a key aspect of the Jewish halakha. Shaliehsabou arguably lacked independent authority to make some decisions regarding food preparation, but "there is no requirement that an individual have the 'final say' on spiritual matters." Diocese of Raleigh, 213 F.3d at 803. Importantly, it was his responsibility to consult with the Vaad for proper resolution of any concerns. In sum, we

> cannot say, given the importance of dietary laws to the Jewish religion, that the duties of mashgichim do not involve religious worship and ritual.
>
> In addition to performing religious ritual, Shaliehsabou occupied a position that is central to the spiritual and pastoral mission of Judaism. As a juridical religion, Judaism is dependent upon compliance with its laws, including the kashruth, and Shaliehsabou was the vessel through whom compliance with the kashruth was ensured for residents at the Hebrew Home. Unlike the teachers in Dole, Shaliehsabou, through his mashgiach tasks, performed sacerdotal duties. As Shaliehsabou has admitted, in the Jewish faith, non-compliance with dietary laws is a sin. As explained above, Jews view their dietary laws as divine commandments, and compliance therewith is as important to the spiritual well-being of its adherents as music and song are to the mission of the Catholic church. In short, failure to apply the ministerial exception in this case would denigrate the importance of keeping kosher to Orthodox Judaism.
>
> Accordingly, we hold that Shaliehsabou is a "minister" for purposes of the ministerial exception to the FLSA because his primary duties included supervision and participation in religious ritual and worship, and his position is important to the spiritual mission of Judaism.
>
> …

32. Black's Law Dictionary, (9th Ed.) defines "office" as "A right, and correspondent duty, to exercise a public trust. A public charge or employment." The Ontario Court of Appeal has adopted a similar definition (see *Hanis v. Teevan*, 162. D.L.R. (4th) 414 (1998)).

33. The Board's obligation is not to determine whether all Mashgiachim in Ontario are religious office holders. It may be that some are. The Board's job is to determine whether the Rands are religious office holders. In my view they are not.

34. The other office holders set out in the s. 3(5)7 exemption provide context to the meaning to be given to the term holder of religious office. The essential feature of the holder of a political or judicial office is independence. A person is elected or appointed to the office and then acts in that capacity with minimal oversight. In my view, a religious office holder within the meaning of the Act has significant independence. However, the Rands did not have any greater independence than any other non-religious food inspector. Furthermore if one looks at the exemptions set out in clause 8 (A member of a quasi-judicial tribunal) and clause 9 (A holder of elected office in an organization, including a trade union) of section 3(5), it is clear from the context closest to clause 7 that the exemption is meant to apply to relationships that are not traditional employer/employee ones. Those that are elected to hold an office and those who hold judicial or quasi-judicial office are clearly not situated in a traditional employer to employee relationship, for a variety of reasons. The Rands however appear to be what is more like a traditional employer/employee relationship.

35. There is no dispute that the Council exercises employment control over the Rands. It assigns them to the particular clients and decides whether they should have an exclusive assignment or not. Mashigiachim must comply with the instructions and procedures set out by the Rabbinical authority in the Council. They are paid an hourly wage, including pay for travel time.

36. The way in which the Council dealt with Morley Rand in attempting to stop what they viewed as his insubordinate behaviour is strong evidence of a regular employment relationship. Not only did they call him an employee (and refer to the Council as the employer) and assert that he had certain obligations as an employee, they treated him as an individual over whom they had authority. They also took away his work for inspecting the Copper Creek Golf course and suspended him. The Council did not treat Mr. Rand as if he was an office holder. In fact, the concept of "insubordination" and holding office appear nearly inconsistent.

37. It is possible to envision a Mashgiach who might hold an office. Indeed, the U.S. case demonstrates such possible facts which might apply even in Ontario. However, the Rands are not in that kind of position. They are two of numerous Mashigiachim that carry out the Council's functions. While they have some freedom in how they carry out their respective functions, there is also oversight – both from an employment perspective and a religious perspective which lead me to conclude they are not religious office holders.

38. Leaving aside how the Council heretofore both characterized and treated the Rands, one would think that there must be more to be a "religious office holder" than either mere characterization as such (whether self-serving or not) or that the functions or work that individual in question performs are significant or important to fulfill religious obligation or ritual – otherwise any employees of a religious institution could be characterized as a religious office holder. Not only was Morley Rands' evidence that he and his son had no significant independent authority unchallenged through direct evidence by the Council, but no evidence was tendered that they require any specific education, training, certification or qualifications to hold this religious office other than they themselves be Orthodox, Shomer Shabbat and pass an interview. Without in any way disputing how crucial the views of Kashruth may be to the practice of Orthodox Judaism (at least), or how crucial it may be to be assured that they are observed, that alone cannot transform individuals who are described as employees, directed and treated like employees, paid and engaged as employees, into the holders of religious office with the consequence that the provisions of remedial protective legislation which is supposed to be given fair, large, liberal and purposive construction and interpretation are avoided.

39. For all of the foregoing reasons, I conclude that the Rands are not exempted from the Act's protection by the "religious office holders" exemption. I am not seized regarding the merits of the applications. These matters are referred to the Registrar to be set down for hearings.

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**1129-10-R; 1308-10-U** Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Nipissing First Nation**, Responding Party v. Union of Ontario Indians, Intervenor; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Nipissing First Nation, Responding Party

**Certification – Constitutional Law – Construction Industry – The Labourers sought to certify a unit of construction workers employed by the Nipissing First Nation – The NFN responded with an assertion that the work was federally regulated – The Board examined the structure, hierarchy and reporting responsibilities of the NFN and agreed that the First Nation, when engaging workers in construction for the sole benefit of the**

**reserve (in accordance with its delegated jurisdiction under the *Indian Act*, its by-laws, vision and mission), was federally regulated – Canvassing case law from several provincial labour boards, Courts of Appeal and the Supreme Court of Canada, the Board held that when the reserve employees performed construction work for the benefit of the reserve alone, they were engaged in the core function of reserve governance – First, the work is performed on the reserve, under the direction of the band council, for the collective benefit of band members residing on the reserve – Secondly, the *Indian Act* specifically delegates to the NFN the responsibility for intra-reserve maintenance of roads, bridges, etc., the expenditure of capital moneys for same, as well as the power to make by-laws with respect to such construction and maintenance – Finally, the work is completely integrated with other work done by the NFN within its governance function – Application dismissed**

**BEFORE:** *Diane L. Gee*, Alternate Chair.

***APPEARANCES:*** *Sean McFarling, Kyle Brisson* and *Geoff Nicholson* for the applicant; *Alan Whyte, Dwayne Nashkawa* and *Patrick Stevens* for the responding party; *Jenny Restoule-Mallozzi* and *Austin Acton* by way of the filing of written submissions on behalf of the intervenor.

**DECISION OF THE BOARD**: November 9, 2011

1. Board File No. 1129-10-R is an application for certification filed pursuant to section 128.1 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). By way of the certification application, the Labourers' International Union of North America, Ontario Provincial District Council (the "Union") seeks to be certified in respect of the following bargaining unit:

> all construction labourers, in the employ of Nipissing First Nation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all sectors of the construction industry within a radius of 33 km (approximately 20 miles) of the North Bay post office (Board Area 16) excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working forepersons and persons above the rank of non-working forepersons.

2. Nipissing First Nation ("NFN") is a "band" within the meaning of the *Indian Act*, R.S. 1985, c. I-5. NFN objects to the application on the basis that it is a non-construction employer as defined in section 126 of the Act and on the further basis that the Board lacks jurisdiction to entertain the application because the labour relations of NFN are federally regulated. In the alternative, NFN seeks to amend its list of employees to indicate that there were no employees at work on the date of application performing bargaining unit work.

3. Notice of the jurisdictional issue was given to the Attorneys General of Ontario and Canada neither of which participated in the Board's proceedings. The Union of Ontario Indians participated by way of the filing of written submissions. The Union of Ontario Indians did not attend at the hearing of this matter.

4. The Union accepts that NFN is federally regulated insofar as it is engaged in activities that are concerned with governing the communal affairs of the First Nation. The Union refers to the functions of NFN that it concedes are federally regulated as "governance functions". The

Union argues, however, that, when NFN performs work within the "construction industry" as defined in section 1 of the Act, NFN is not engaged in its "governance function", and hence the construction work it performs is provincially regulated.

5. For the reasons that follow, the Board is satisfied that the construction work in issue herein performed by NFN in the reserve is federally regulated.

6. I pause at this juncture to clarify two points. First, the Union's argument in this matter was premised on the assumption that, if the performance of construction industry work was found to fall outside of NFN's governance function, it would be found to be provincially regulated. Given my determination herein, it is not necessary for me to consider this issue. However, I wish to be clear that this decision does not stand for the proposition that, had the work in issue been found to fall outside of NFN's governance function, it would, therefore, have been found to be provincially regulated. I make no determination with respect to that issue.

7. Secondly, it is important to bear in mind the scope of the work that is relevant to my determination as to whether, when NFN performs construction industry work, it is operating outside of its governance function. I am not concerned with whether NFN engaging in construction industry work *in the abstract* results in NFN operating outside of its governance function. I am concerned with whether, when NFN performs the very construction work that it in fact does perform from time to time using its own direct employees, it is operating outside of its governance function. Having regard to the evidence heard, the work that NFN performs from time to time using its own direct employees that would fall within the definition of construction industry as contained in the Act consists of grading, improving or extending roads; installing culverts; and making sewer and watermain connections to residential homes. On one occasion NFN assigned employees to perform work in connection with the demolition of an old church. All of the work is performed in the reserve for the benefit of band members.

## Facts

8. There are very few facts in dispute in this matter. The facts that are in dispute are not material to the Board's determination herein.

9. Responsibility for Indians and Lands reserved for the Indians was delegated to the Crown by section 91(24) of the *Constitution Act, 1867.* In 1876, the Crown enacted the *Indian Act*, to fulfil its responsibilities under 91(24) of the *Constitution Act, 1867.* To date, the *Indian Act* remains the fundamental piece of legislation governing the affairs of Indians and Lands reserved for the Indians.

10. As indicated above, Nipissing First Nation is a "band" as defined in section 2(1) of the *Indian Act*. It is governed by an elected "council of the band", also defined in section 2(1) of the *Indian Act*:

> "band" means a body of Indians
>
> (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951;

> (b) for whose use and benefit in common moneys are held by Her Majesty; or
>
> (c) declared by the Governor in Council to be a band for the purposes of this Act;
>
> …
>
> "council of the band" means
>
> (a) in the case of a band to which section 74 applies, the council established pursuant to that section,
>
> (b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

11. Nipissing First Nation has elected a council that consists of a chief and seven councillors.

12. Through the provisions of the *Indian Act*, the Crown has delegated its jurisdiction over Indians and Lands reserved to the Indians to the band and its council. The delegation of jurisdiction includes such fundamental rights as Indian status, band membership, possession of land in a reserve, elections of the council of the band, and the creation and enforcement of bylaws governing the affairs of the band. For our present purposes, the following provisions of the *Indian Act* are relevant:

> Roads, bridges, etc.
> 34.(1) A Band shall ensure that the roads, bridges, ditches and fences within the reserve occupied by that Band are maintained in accordance with instructions issued from time to time by the superintendent.
>
> Idem
> (2) Where, in the opinion of the Minister, a Band has not carried out the instructions of the superintendent issued under subsection (1), the Minister may cause the instructions to be carried out at the expense of the Band or any member thereof and may recover the cost thereof from any amounts that are held by Her Majesty and are payable to the Band or member. R.S., c. I-6, s. 34.
>
> …
>
> 64.(1) With the consent of the Council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band
>
> …
> *(b)* to construct and maintain roads, bridges, ditches and watercourses on reserves or on surrendered lands;
> *(c)* to construct and maintain outer boundary fences on reserves;
> …
> *(g)* to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the

Minister will be of permanent value to the Band or will constitute a capital investment;

...

*(i)* to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any Band property;

*(j)* to construct houses for members of the band, to make loans to members of the Band for building purposes with or without security and to provide for the guarantee of loans made to members of the Band for building purposes; and

*(k)* for any other purpose that in the opinion of the Minister is for the benefit of the band.

66. (1) With the consent of the council of a band the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in the opinion of the Minister will promote the general progress and welfare of the band or any member of the band.

...

By-laws

81. (1) The Council of a Band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

*(a)* to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;

*(b)* the regulation of traffic;

*(c)* the observance of law and order;

*(d)* the prevention of disorderly conduct and nuisances;

*(e)* the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;

*(f)* the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works;

*(g)* the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone;

*(h)* the regulation of the construction, repair and use of buildings, whether owned by the Band or by individual members of the band;

*(i)* the survey and allotment of reserve lands among the members of the Band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;

*(j)* the destruction and control of noxious weeds;

*(k)* the regulation of bee-keeping and poultry raising;

*(l)* the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;

*(m)* the control or prohibition of public games, sports, races, athletic contests and other amusements;

*(n)* the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;

> *(o)* the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;
> *(p)* the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;
> *(p.1)* the residence of Band members and other persons on the reserve;
> *(p.2)* to provide for the rights of spouses or common-law partners and children who reside with members of the Band on the reserve with respect to any matter in relation to which the Council may make by-laws in respect of members of the band;
> *(p.3)* to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;
> *(p.4)* to bring subsection 10(3) or 64.1(2) into effect in respect of the band;
> *(q)* with respect to any matter arising out of or ancillary to the exercise of powers under this section; and
> *(r)* the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.

13. By virtue of section 34 of the *Indian Act*, a band is required to ensure that roads, bridges, ditches and fences within the reserve are maintained as instructed by the superintendent. If the band fails to do so, the Minister of Indian Affairs and Northern Development (the "Minister") can have the work carried out at the expense of the band. Pursuant to section 64, the Minister, with the consent of the council of a band, can authorize and direct the expenditure of capital moneys to construct roads, bridges, ditches and watercourses on reserves (s. 62: capital moneys are all Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band). Section 66 enables the Minister, with the consent of the band, to authorize and direct the expenditure of revenue moneys for any purpose that in the opinion of the Minister will promote the general progress and welfare of the band or any member of the band (s. 62: revenue money is Indian moneys other than capital moneys). Section 81 delegates to the band council power to pass by-laws in a wide range of matters that are internal to the band including construction of watercourses, roads, bridges, ditches, fences and other local works.

14. As indicated above, NFN has an elected council that consists of a chief and seven councillors. The council is structured much like a municipal government. Council provides overall direction and leadership over the affairs of the band. Council is responsible for, among other things, the development of an annual strategic operational plan which contains long-range goals and objectives as well as the development of annual business plan for each program or service. The construction activity engaged in by NFN is encompassed within these plans. NFN's stated vision and mission are as follows:

> VISION
>
> To empower the membership of the Nipissing First Nation to work together in a positive, progressive manner and work towards a common goal to be socially, economically, culturally sensitive, independent and self-governed.

> MISSION
>
> It is our responsibility passed on to us to continue to protect our Nation's inherent rights while striving to improve the well-being and quality of life for our Nation.

15. NFN employs approximately 120 employees. Reporting directly to the chief and council is an Executive Director, Mr. Nashkawa. Mr. Nashkawa has the administrative responsibility to implement the direction of chief and council. He directs the overall operations of NFN.

16. The activities of NFN are divided into 13 departments as follows:

- Facilities and Infrastructure
- Project Manager
- Housing
- Economic Development
- Lands and Resources
- Human Resources
- Finance
- Employment and Training
- Culture and Heritage
- Education
- Social Services
- Health
- Natural Resources

17. Each department has a manager. The department managers report to Mr. Nashkawa.

18. The vast majority of NFN's 13 departments are further subdivided into what I will refer to as divisions. The Facilities and Infrastructure Department is subdivided into Public Works; Maintenance; IT; and Community Planning Divisions. Each division has a Supervisor who reports to the Department Manager. In a few instances the divisions are further subdivided into what I will refer to as subdivisions. The Public Works Division of the Facilities and Infrastructure Department is subdivided into Landfill and Waste Management; Water and Wastewater; and Roads.

19. The only construction work NFN performs using its own employees is performed in the reserve and for the benefit of the band members. There is no suggestion that NFN performs any construction work outside of the reserve or for the benefit of anyone who is not a band member. The employees who perform this work are not dedicated to performing construction work. Rather, they have a range of duties (set out below) that include many non-construction activities. What they do on any given day is determined by their supervisor. They may spend some, all, or no time, on any given day, engaged in work of a construction nature.

20. Construction work is performed by NFN employees from the Public Works Division in the position of "Equipment Operator". The Position Description for an Equipment Operator lists the types of work this individual does on a day-to-day basis as follows:

- Discusses plans, priorities and schedules with the Public Works Supervisor, including the most useful equipment and materials to be used for all jobs.
- Carries out work assignments using a variety of vehicles, heavy equipment, hand and power tools.
- Performs road and public works operations, including but not limited to construction site and paving preparation; co-operating with contractors on projects that are contracted out; maintaining the First Nation's roads and properties in good condition; hauling, loading and spreading gravel; collecting and disposing of trash, waste site maintenance, asphalt patching, culvert cleaning; grass cutting; tree removal; dust control; and the repair and installation of road signs, fences and culverts; welding and general vehicle maintenance.
- Performs winter maintenance and emergency response, including plowing, sanding, salting and ice removal.
- Performs general property and building repairs and maintenance services, including but not limited to general handyman repairs, roofing, painting, grass cutting and gardening and general labour services.

21. As indicated above, the construction work that has been performed by NFN using its own direct employees has included connecting sewer and watermain services to homes; constructing culverts; demolishing an old abandoned church; and grading, extending or improving roads. This work is what is commonly referred to as "public works" or "infrastructure work" meaning it is work performed on systems that are built and maintained for the use and benefit of a community of persons. Mr. Nashkawa explained that NFN connects sewer and watermain services to a band member's home in keeping with the band's interest in ensuring that members have access to sanitary living conditions and will be encouraged to reside on the reserve.

22. When the scope of a construction project requires manpower and/or equipment in excess of NFN's own resources, NFN contracts the work out. When work is contracted out, it is overseen by the Project Management Department. NFN prefers to do construction work using its own employees if possible for a number of reasons: there is a shortage of work on the reserve and thus NFN has an interest in maximizing employment opportunities for band members; NFN wants to maintain control over the provision of services; NFN wants to be able to closely monitor the quality of the work; and it is critically important to NFN to be self-governing and self-sufficient.

23. NFN receives the funding it requires for all of the services it provides, including the construction work, from the federal government. NFN and Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development ("Canada") are parties to a Funding Agreement that defines core services to be provided by the band and establishes a formula by which the band will receive funding from the federal government in order to provide such services. Amongst the core services included in the Funding Agreement that are to be provided by NFN are:

- the construction of physical works (including the construction of housing, water, sewer, roads, bridges, fire protection, electrification, elementary and secondary education facilities, as well as public facilities to support administrative, recreational and cultural activities) in accordance with developmental level of service standards; and

- the operation and maintenance of physical works and assets under the care and control of the Council

24. By way of the Funding Agreement, NFN agrees to provide the core funded services in accordance with the terms and conditions of the Funding Agreement. The Funding Agreement includes delivery standards that NFN must meet when providing the core funded services. The delivery standards set in respect of the construction of physical works consist of a number of management principles such as the obligation that the project be inspected and certified for compliance by qualified inspectors at various stages. NFN does not use the services of a provincial building inspector for such inspections. NFN uses an inspector from a Tribal Council that provides the services of an inspector to a number of different Indian bands. There is an appendix to the Funding Agreement that lists the funding provided to NFN broken down by program. This Appendix serves as the annual budget for the programs delivered by NFN.

25. NFN Council is required to account to Canada with respect to the delivery of the services and programs called for under the Funding Agreement and the monies provided. The band council provides over 100 reports to Canada each year in that regard.

26. Furthermore, the Funding Agreement requires NFN to provide audited financial statements to Canada each year. These statements encompass all of NFN's activities, including construction activity. Construction equipment owned by NFN is included in the list of NFN assets. These financial statements are provided to Canada which conducts a full review of the statements, ultimately leading to approval (or non-approval) of the statements.

27. All NFN departments are required to prepare an annual work plan and budget. The process begins with a community meeting where members of the band can provide their input to council. Following the community meeting, the chief and council meet in order to set strategic goals. The strategic goals are set out in the form of a "Medicine Wheel of Goals". One of the strategic goals identified on the Medicine Wheel of Goals entered into evidence was "sustainable development of infrastructure and community resources."

28. The strategic goals identified by the chief and council are then conveyed to the managers of all of the departments including the Manager of Facilities and Infrastructure. The managers are charged with preparing a draft annual work plan for their department. The manager's draft annual work plan is required to align with the strategic goals identified by the chief and council.

29. Draft work plans prepared by the department managers are presented to Mr. Nashkawa who ensures that they are consistent with the strategic goals set by council as well as the budget. The Finance Manager then reviews the work plans. Following review by the Finance Manager, the work plans go to the Finance Committee of Council for review. The

Finance Committee may direct that projects listed in the work plans be dropped or replaced with other projects. The Finance Committee might direct such a change to the work plans in order to bring them into alignment with council's priorities. The Finance Committee then makes a recommendation to council. Again, the chief and council may alter the priorities set in the draft work plans prior to providing their approval.

30. Once a department's annual work plan has been approved, it is provided, by the manager of the department, to the supervisors of each departmental division. The supervisors then develop a more detailed, day-to-day schedule of work. Any construction work that NFN performs is included in the Facilities and Infrastructure Department annual work plan without distinction from all of the other work, such as collecting and disposing of trash, waste site maintenance, asphalt patching, culvert cleaning; grass cutting; tree removal; dust control; and the repair and installation of road signs, fences and culverts; welding and general vehicle maintenance.

31. The hiring of all NFN employees is centrally coordinated through the Human Resources Department. There is a standard evaluation process in place for all NFN employees and all NFN employees are covered by the same policies and procedures.

**Submissions on behalf of the Union**

32. The Union does not dispute that NFN is federally regulated in so far as it is engaged in the function of band administration or governance. The Union argues that, to the extent NFN engages in construction work, it engages in an activity that is not within its governance function and hence, when NFN engages in construction activity, the employees performing that work fall within provincial jurisdiction.

33. The Union points out that labour relations are presumptively a provincial matter. An exception arises only where the normal and habitual activities of the undertaking are such that federal jurisdiction over labour relations is an integral part of federal jurisdiction over that matter as a whole. The Union argues that there have been a number of decisions where the Act has been found to apply to Indians in a range of circumstances touching on labour relations. Citing *Nipissing First Nation Fur Dressers Inc.*, [1999] O.L.R.D. 3791, the Union argues that, even where the band council is directly involved in the ownership and running of an enterprise, the OLRB has found that the undertaking falls within provincial jurisdiction.

34. The Union further argues that construction work on a federal undertaking has been found to be within provincial jurisdiction. The Union relies on *Peter Kiewit Sons Co. Ltd.*, [1988] OLRB Rep. May 510; *Toronto Dominion Bank*, [1992] OLRB Rep. Oct. 1123; affd [1993] OLRB Rep. June 578; leave to appeal to Ontario Court of Appeal denied [1993] OLRB Rep. June 579n; and leave to appeal to the Supreme Court of Canada denied [1994] OLRB Rep. January 127n; *PCL Construction Ltd.*, [1995] OLRB Rep. Aug. 1127; *AXOR Construction Canada Inc.*, [1999] OLRB Rep. November/December 933; *Régulvar Canada Inc./Régulvar Inc.*, [2008] ORLB Rep. July/August 563. The Union relies on *Yellow Jacket Welding Co.*, [1974] OLRB Rep. Oct. 709 in support of its position that construction activity on a reserve is *prima facie* a provincial work or undertaking.

35. The Union further submits that an employer can be subject to both federal and provincial labour laws and, where a federally regulated entity carries on a range of activities, it is

necessary to determine which of those activities are fundamental to the core power in issue. The Union relies on the following cases in support of its position that construction work performed by employees of a federal undertaking is provincially regulated: *Toronto Dominion Bank, supra*; *Electrical Power Systems Construction Assn.*, [1994] OLRB Rep. June 752; *Manitou Mechanical Ltd.*, [1978] OLRB Rep. July 657 and *Henuset Rentals Ltd.* (1979), 79 ¶ CLLC 14,194.

36. Finally, in support of its argument that the construction activity engaged in by NFN is not integral to the core federal power in issue, the Union relies on the following:

- While NFN may be required to ensure that construction work is performed on the reserve in order to comply with its obligations under the *Indian Act* and various Funding Agreements it has entered into with the federal government, it is not required to perform such work using its own employees.

- The Union likens the performance of construction work by NFN to its engaging in an undertaking such as a forestry business.

- The Union argues that the fact that NFN contracts out larger scale construction projects indicates that the performance of construction work is not something done by NFN as part of its governance activities. Rather, it suggests that the performance of construction work is severable from the normal activities engaged in by NFN.

- The Union argues that there is nothing inherently aboriginal in the performance of construction work.

- The Union argues that if the construction work performed by NFN using its own direct employees were contracted out, the contractor performing the work would be provincially regulated. The Union argues that the construction work should be within the same jurisdiction regardless of whether it is performed by NFN directly or by a contractor.

37. Given that my determination is consistent with that urged upon me by NFN and the Union of Ontario Indians, I have not summarized their submissions herein. Their submissions were extremely thorough and of tremendous assistance to my understanding of the issue in dispute and jurisprudence on point.

**Review of the Jurisprudence**

38. As is discussed below, it has been consistently determined over the course of a number of decisions that the labour and employment relations of a band falls within federal jurisdiction.

39. In the case of *Lawrence Frances et al.*, [1981] 1 F.C. 225 (F.C. CA) (herein "*St. Regis*") the Federal Court of Appeal was asked by the St. Regis Indian Band Council to set

aside a certification order of the Canada Labour Relations Board that entitled the Public Service Alliance of Canada ("PSAC") to act as bargaining agent for all employees of the band council. The St. Regis Band Council argued that the Canada Board lacked jurisdiction to deal with the employment of Indian persons on or in respect of Indian reserves and further that the Council could not be an "employer" under the *Canada Labour Code*. Two of the three justices of the Federal Court of Appeal determined that the Band Council could not be an "employer" under the *Canada Labour Code* and allowed the appeal on that basis. Two of the justices dealt with the issue as to whether the Canada Board had jurisdiction to deal with the employment of Indian persons on or in respect of Indian reserves and concluded that the activity in which the employees in question were engaged was activity which falls within federal legislative jurisdiction with respect to Indians and Lands reserved for Indians under subsection 91 (24) of the *British North America Act, 1867* and constitutes a federal work, undertaking or business within the meaning of sections 2 and 108 of the *Canada Labour Code*.

40. Mr. Justice Heald, in the course of providing reasons for his finding that the Canada Board had jurisdiction in respect of the employees of a band council, made the following comments describing the responsibilities of the band council and the work performed by its employees:

> 17. … It is accordingly necessary, in my view, applying the functional test adopted by Beetz J. to determine the nature of the work being performed by the unit of employees in question. …[I]t is clear that these employees are engaged in education administration, the administration of Indian lands and estates, the administration of welfare, the administration of housing, school administration, public works, the administration of an old age home, maintenance of roads, maintenance of schools, maintenance of water and sanitation services, garbage collection, etc. Thus bus drivers, garbage collectors, teachers, carpenters, stenographers, housing clerks, janitors and road crews comprise, *inter alia*, the unit of employees in question. In my view, it is correct to characterize the function of this unit generally as being almost entirely concerned with the administration of the St. Regis Band of Indians and to say that its entire function is governmental in nature and comes under the jurisdiction of the *Indian Act*. It is also instructive to peruse the various provisions of the *Indian Act* to determine the extent to which an Indian band and its council are involved in the administration of the affairs of an Indian band to which, as is the case here, the *Indian Act* applies. …. Section 34 imposes a duty upon a band to maintain the roads, bridges, ditches and fences within the reserve occupied by that band. …Section 64 empowers the Minister, with the consent of the band council, to expend capital moneys of the band for various purposes: … for the construction and maintenance of roads, bridges, ditches, water courses and outer boundary fences; … to construct and maintain permanent improvements on the reserve; to make loans to band members; to meet expenses necessarily incidental to the management of reserve lands and band property; to construct houses for band members and to make loans to band members for building purposes; and generally, for any other purpose for the benefit of the band, in the opinion of the Minister. …
>
> …
>
> 20. Based on the powers given to the band and its council in the *Indian Act* as detailed *supra* and the evidence before us of the exercise of those powers

> by this band and its council, I am satisfied that the subject unit of employees is very directly involved in activities closely related to Indian status. At page 1048 of his reasons in the *Four B* case *supra*, Mr. Justice Beetz gives examples of the kind of rights which, in his view, would have to be considered as being closely connected with Indian status. He refers to registerability, membership in a band, the right to participate in the election of chiefs and band councils, and Reserve privileges. In my view, these examples relate directly to band administration, having regard to the powers given to the band and council under the [Indian] Act, and, in my view, fall into the same category as the powers exercised by this band and its council as set out *supra*. However, the factual situation in the *Four B* case (*supra*) is completely different from the case at bar. In *Four B*, four reserve Indians were conducting a commercial business on an Indian reserve. The status and rights of the unit of employees as Indians and as members of the band were not affected in any way. In the case at bar, the unit of employees in question were directly and continuously concerned with the election of councillors and chiefs, the matter of right to possession of reserve lands, the right of Indians on the reserve to have their children educated in schools on the reserve, the right to welfare when circumstances warrant it, the right to the facilities of the old age home in proper circumstances, etc. The total administration of the band is continuously concerned with the status and the rights and privileges of the band Indians. I am thus firmly of the opinion that the labour relations in issue here are "an integral part of primary federal jurisdiction over Indians or Lands reserved for the Indians", thus establishing federal legislative competence pursuant to the provisions of subsection 91(24) of *The British North America Act, 1867*, 30 & 31 Vict., c. 3 (U.K.) [R.S.C. 1970, Appendix II, No. 5].

41. Similarly, Mr. Justice Le Dain ruled, in part, as follows:

> 27. I agree with Mr. Justice Heald that on the facts which we must treat as relevant for determination of the issues of jurisdiction on this section 28 application the activity in which the employees in question are engaged is activity which falls within federal legislative jurisdiction with respect to "Indians and Lands reserved for the Indians" under subsection 91(24) of *The British North America Act, 1867* and constitutes a federal work, undertaking or business within the meaning of sections 2 and 108 of the *Canada Labour Code*. The activity consists of certain functions or services performed by or under the supervision of the Band Council, and viewed as a whole it may be characterized as the administration of the Reserve and the affairs of the Band. It is concerned with the organization and maintenance of communal life on the Reserve. The Band Council derives its authority for the provision of these functions or services from the terms of the *Indian Act* and applicable Regulations, as well as from administrative approvals by the Department of Indian Affairs and Northern Development, which establishes programs for the reserves and provides the necessary financial resources for their implementation. The Band Council is carrying out some of the administration that inheres in federal jurisdiction with respect to the reserves. Such administration, viewed as a comprehensive responsibility of a local government nature, is a work, undertaking or business within the meaning of the *Canada Labour Code* on the broad view that is to be taken of those terms in the light of the decision of the Supreme Court of Canada in the *City of Yellowknife* case (*supra*).

42. As described in the *St. Regis* decision, the work performed by the employees of the St. Regis Indian Band Council was very wide ranging. The work performed was not limited to work of an administrative nature; some of the employees, such as the garbage collectors and bus drivers, were engaged to provide an actual service. While the decision does not refer to employees performing construction work it does speak of employees engaged in public works and the maintenance of roads, water and sanitation services. Amongst the positions described as falling within the bargaining unit was the position of carpenter and road crews.

43. In coming to the conclusion that the band's operations covered by the union's application for certification fell within federal jurisdiction, Mr. Justice Heald determined that the function of the bargaining unit was almost entirely concerned with the administration of the band and that its entire function was governmental in nature. Notably, Mr. Justice Heald found the "total" administration of the band to be "continuously" concerned with the status and rights of Indians and stated that he was "firmly" of the opinion that the labour relations in issue were federally regulated.

44. Mr. Justice Le Dain described the activities in issue as the "organization and maintenance of communal life on the reserve". Noting that the band council derived its authority from the *Indian Act* and applicable regulations as well as administrative approvals from the Department of Indian Affairs and Northern Development, Mr. Justice Le Dain concluded that the St. Regis Band Council was carrying out some of the administration that adheres in federal jurisdiction with respect to reserves.

45. The Federal Court of Appeal's determination in *St. Regis* that a band council cannot be an employer for the purposes of the *Canada Labour Code* was appealed by the Public Service Alliance of Canada to the Supreme Court of Canada. In *Public Service Alliance of Canada v. St. Regis Indian Band*, [1982] S.C.J. No. 62 the Supreme Court overturned the Federal Court of Appeal's determination on this point. The Federal Court of Appeal's finding that the employees of the St. Regis Indian Band were federally regulated was not appealed and hence that finding stands.

46. The case of *Whitebear Band Council v. Carpenters Provincial Council Saskatchewan*, [1982] 3 W.W.R. 554 (Sask. CA) concerned an application for certification filed by a union to represent carpenters and carpenters apprentices employed by an Indian band to carry out home construction on the reserve. The band council objected to the jurisdiction of the Saskatchewan Labour Relations Board contending that the labour relations in issue fell under federal and not provincial legislative jurisdiction and that the band council was not the employer of the employees.

47. The Saskatchewan Board held that the construction of housing on the reserve constituted an ordinary industrial activity within the province and that the regulation of the labour relations associated therewith fell within provincial legislative jurisdiction. It was satisfied that the band council was an "employer" within the meaning of Section 2(g) of the Saskatchewan *Trade Union Act* and was in fact employing the carpenters. The band council applied to the Saskatchewan Court of Appeal for judicial review.

48. The Saskatchewan Court of Appeal overturned the decision of the Saskatchewan Board. It included within its analysis the following description of the nature of a band council:

> The nature of the Band Council
> 13. As municipal councils are the "creatures" of the Legislatures of the Provinces so Indian Band Councils are the "creatures" of the Parliament of Canada. Parliament in exercising the exclusive jurisdiction conferred upon it by Section 91.24 of the *British North America Act* to legislate in relation to "Indians and Lands Reserved for the Indians" enacted the *Indian Act* which provides - among its extensive provisions for Indian status, civil rights, assistance, and so on and the use and management of Indian Reserves - for the election of a Chief and twelve Councillors by and from among the members of an Indian Band resident on an Indian Reserve. These elected officials constitute Indian Band Councils who in general terms are intended by Parliament to provide some measure - even if rather rudimentary of Local Government in relation to life on Indian Reserves and to act as something of an intermediary between the Band and the Minister of Indian Affairs.
>
> 14. More specifically Section 81 of the Act clothes Indian Band Councils with such powers and duties in relation to an Indian Reserve and its inhabitants as are usually associated with a rural municipality and its Council: a Band Council may enact bylaws for the regulation of traffic; the construction and maintenance of public works; zoning; the control of public games and amusements and of hawkers and peddlers; the regulation of the construction, repair and use of buildings, and so on. Hence a Band Council exercises - by way of delegation from Parliament - these and other municipal and governmental Powers in relation to the Reserve whose inhabitants have elected it.
>
> ...
>
> 19. In summary, an Indian Band Council is an elected public authority, dependent on Parliament for its existence, powers and responsibilities, whose essential function it is to exercise municipal and government power - delegated to it by Parliament - in relation to the Indian Reserve whose inhabitants have elected it; as such it is to act from time to time as the agent of the Minister and the representative of the Band with respect to the administration and delivery of certain Federal programs for the benefit of Indians on Indian Reserves, and to perform an advisory, and in some cases a decisive role in relation to the exercise by the Minister of certain of his statutory authority relative to the Reserve.

49. The Saskatchewan Court of Appeal stated that there was a "critical factual distinction" between the case of *Four B Manufacturing Ltd. v. U.G.W.*, [1980] 1 S.C.R. 1031 where an undertaking operated by reserve Indians on reserve lands was found to be provincially regulated, and a situation where the employer is the band council and is directly involved and responsible for the work in respect of which the employees are engaged.

50. The Saskatchewan Court of Appeal specifically addressed the issue as to whether the regulation of the labour relations of a band council and its employees forms an integral part of primary federal jurisdiction in relation to "Indians and Lands Reserved for the Indians" and whether the construction of houses on the reserve can be separated from the broader activity of the band council as a whole:

> 28. As I have observed the primary function of an Indian Band Council is to provide a measure of self government by Indians on Indian Reserves. In enacting bylaws pursuant to their power to do so, and in performing

> generally their local government function, an Indian Band Council is doing that which Parliament is exclusively empowered to do pursuant to Section 92.24 of the *British North America Act* but which Parliament through the *Indian Act* has delegated Band Councils to do. In this sense the function of an Indian Band Council is very much federal. So too, in my opinion, are their associated functions - acting at once as the representative body of the inhabitants of the Reserve and the agent of the Minister with regard to Federal programs for Reserves and their residents - and participating in certain of the decisions of the Minister in relation to the Reserve. Given this, the provisions of the *Indian Act* to which I have referred, and the origin and nature, purpose and function of an Indian Band Council, I am satisfied that the power generally to regulate the labour relations of a Band Council and its employees, engaged in those activities contemplated by the *Indian Act*, forms an integral part of primary federal jurisdiction in relation to "Indians and Lands Reserved for the Indians" pursuant to Section 91.24 of the *British North America Act*. The Federal Court of Appeal came to the same conclusion in the *St. Regis* case (*supra*). …
>
> That then is the general position: but what of the specific activity in this case - building houses?
>
> 29. In my opinion the particular activity in which Whitebear Band Council and its carpenters were engaged - the construction of houses on the Reserve pursuant to the "single contribution" agreement cannot be separated from the activity of the Band Council as a whole, isolated and assigned a different character than that of which it forms part - the general function of the Band Council. To do that would be to run counter to the principles of determination referred to in *Montcalm* (*supra*) and to have regard for exceptional or casual factors rather than looking to the normal or habitual activities of the work of the employer as those of a going concern to avoid the fractured application of the constitution spoken out [sic] by Beetz, J., in *Montcalm*. Accordingly, I am satisfied that the construction of houses on the Reserve, in the circumstances, is part and parcel of the general operation as a whole of the Band Council and cannot properly be removed from that whole and viewed as an ordinary industrial activity in the Province and falling under provincial jurisdiction; this I think is the error made by the Labour Relations Board.

51. The Saskatchewan Court of Appeal found that, "in performing generally" a local government function, an Indian band council is doing that which Parliament is empowered to do but has delegated to the band council by way of the *Indian Act*. The Court found that, not only are the delegated functions federally regulated, so too are "associated functions". Given the origin and nature, purpose and function of an Indian band council, the Saskatchewan Court of Appeal determined that the regulation of a band council and its employees engaged in activities contemplated by the *Indian Act* falls within federal jurisdiction. Of significance, given the facts of the instant matter, is the determination of the Saskatchewan Court of Appeal that the single activity of constructing houses engaged in by the band council and its employees could not be separated from the activity of the band council as a whole. The construction of houses was found to be "part and parcel of the general operation as a whole of the band council" that could not properly be removed from the whole and viewed as an ordinary industrial activity.

52. In the case of *Paul Indian Band*, [1984] 2 W.W.R. 540 (Alberta Court of Appeal), the Paul Band, a band under the *Indian Act*, was charged under the *Alberta Labour Act, 1973* for failing to pay two employees wages earned by them while employed by the band council as special constables. The two employees, who were not members of the band, were hired by the band council for the purposes of limited law enforcement on the reserve. Upon application by the band council they received an appointment under the *Police Act* (a provincial statute) as a special constables authorized to enforce certain provincial statutes as well as some provisions of the *Indian Act*.

53. The provincial court judge found that the *Alberta Labour Act, 1973* applied to the Paul Band because the function in which the band and the special constables were engaged was one falling within provincial jurisdiction pursuant to the *Constitution Act, 1867*, over the administration of justice within the province. He also held that, because the provincial *Alberta Labour Act, 1973* was a law of general application within the province, it applied to the band council pursuant to the provisions of section 88 of the *Indian Act*. The Band was convicted in summary conviction proceedings and the conviction was sustained on appeal to the Court of Queen's Bench. The band council appealed the conviction to the Alberta Court of Appeal on the basis that the band council was not subject to provincial labour legislation.

54. The Alberta Court of Appeal determined that employees are to be classified for jurisdictional purposes by reference to the character, or nature, of the operation of the employer in which they are employed and the legislative authority over that operation. The Appeal Court determined that the trial judge had erred by focussing on the particular activities engaged in by the employees in issue, in isolation from the normal activities of the employer.

55. The Alberta Court of Appeal recognized that there are cases where a particular operation of an employer does not form an integral part of the main operation of that employer and will be characterized for jurisdictional purposes separately from the main operation. However, the Appeal Court determined that such was not the situation in the case before it. The Alberta Court of Appeal determined that the enforcement of provincial laws on the reserve was part and parcel of the normal operations of the band council:

> 15. That [a particular operation not forming part of the main operation] is not the situation here. In enforcing provincial laws on the reserve, the Band Council was carrying out one of a number of powers entrusted to it by s. 81 of the *Indian Act* (*infra*), namely, the regulation of traffic, and the observance of law and order. This was an integral part of the normal operation assigned to the Band Council by s. 81 of the *Indian Act*.
>
> 16. In determining that the *Alberta Labour Act* applied to the employment of a special constable by the Paul Band, the trial judge found that the Band Council, in employing the special constables, was engaged in a provincial undertaking because it had them appointed special constables under provincial law, to enforce provincial laws on the reserve in pursuance of the provincial constitutional function in the administration of justice. In purporting to apply the functional test spoken of by Beetz, J., the trial judge considered only the activity of the employees, in isolation from the principal normal activities of the employer, the Band Council. That was his key error.

> 17. This is not the functional test referred to in the authorities cited. It would result in incongruity, with some employees of a business or concern governed by provincial labour law, and others of the same business or concern by federal labour law, depending on the actual work being done from time to time. In the present case it is shown in evidence that the appellant Band Council employs office staff, health workers, social workers, alcohol counsellors, arena caretakers and others.
>
> 18. In determining the nature of the operation of the Band Council, the trial judge was required to look "at the normal or habitual activities" of the Council "as a going concern": (per Beetz, J., in *Montcalm* (*supra*)) and at the legislative authority over that operation (per Pigeon, J., in *Yellowknife (supra)*).
> 19. The only operations or activities that a Band Council is empowered to carry on are those authorized by Parliament under the *Indian Act*, and in particular by s. 81:
>
> ...
>
> 20. Band Councils are created under the *Indian Act* and derive their authority to operate qua Band Councils exclusively from that Act. In the exercise of their powers they are concerned with the administration of Band affairs on their respective reserves whether under direct authority of Parliament or as administrative arms of the Minister. They have no other source of power. Band Councils are thus within the exclusive legislative jurisdiction and control of the Parliament of Canada over "Indians, and Lands reserved for Indians" assigned to it by s. 91(24) of the *Constitution Act, 1867* and such Councils are thus immune to provincial legislation. ...
>
> 21. There can accordingly be no doubt that the normal operations or activities of the Paul Band Council were those which it was carrying on under authority of the *Indian Act* and thus constituted a federal undertaking or business. That the special constables in question may have been enforcing provincial statutes on the reserve is irrelevant.

56. As stated by the Alberta Court of Appeal, employees are to be classified for jurisdictional purposes by reference to the nature of the operation of the employer in which they are employed and the legislative authority over that operation and not by the nature of the specific activities the employees are engaged in. Further, in the case of a council of a band, its operation is the administration of the reserve and the functions it performs in support thereof are all part of one operation for jurisdictional purposes.

57. In *Nisga'a Valley Health Board,* [1995] B.C.L.R.B.D. No. 285 the British Columbia Labour Relations Board certified the B.C. Government and Services Employees' Union as the bargaining agent for unit composed of "employees of Nisga'a Valley Health Board, Terrace, BC". The Health Board requested reconsideration on the basis that the Health Board came within federal jurisdiction.

58. On reconsideration, the British Columbia Board found that the Health Board had functionally stepped into the shoes of the band councils that made up the Health Board in that it acted as the federal Minister's representative for the provision of health services primarily to the Nisga'a people and its operations were tied to, primarily funded by, and regulated by the federal

Minister responsible for the overall Indian health program. The British Columbia Board determined that the purpose and normal activities of the Health Board was the provision of health services on reserves, a purpose that falls within the functions and normal activities of Indian band administration under Section 81(1)(a) of the *Indian Act*. In the result, it was determined that the Health Board's labour relations form an integral part of federal jurisdiction over Indians and lands reserved for Indians and the reconsideration request was granted.

59. Thus, even where a council of a band has created a separate entity to carry out a portion of its responsibilities, the functions performed by that separate entity are not to be considered separately from the Council's normal activities of Band administration for the purposes of determining constitutional jurisdiction.

60. In the case of *Norway House Cree Nation,* [2008] M.L.B.D. No. 30, the Manitoba Labour Board considered two applications for certification filed by the Norway House Cree Nation Nurses Local 139 of the Manitoba Nurses' Union to represent nurses employed by Norway House Cree Nation and nurses employed by Pinaow Wachi Inc., a corporation wholly owned by the band council. The employers argued that they were federally regulated and outside the jurisdiction of the provincial Legislature.

61. The *Norway House Cree Nation* decision contains a very thorough review of the jurisprudence in which the constitutional jurisdiction of a First Nation employer is considered, the most relevant of which I have discussed above. Based on its review of the jurisprudence, the Manitoba Board concluded as follows:

> 47. Where a First Nation is engaged in an endeavour which is part of the normal governmental activity of a Band pursuant to its powers under the *Indian Act*, a number of decisions have found that the regulation of those labour and employment relations are governed by federal legislation. At first blush, this trend appears to run counter to the well-settled principle that jurisdiction depends upon the operation of the business, not the person of the employer as was stated by Pigeon J. for the Supreme Court of Canada in *C.L.R.B. and Yellowknife*, [1977] 2 S.C.R. 729 at page 736. That, however, is certainly not the case. Courts have habitually held that where a Band Council is effectively carrying out powers entrusted to it under section 81 of the *Indian Act*, the labour relations of the operation in question are more likely to fall within the federal legislative scheme. The reasoning underpinning such decisions is that, fundamentally, the legislative authority of the Band qua employer is federal as a Band Council is a creature of the federal *Indian Act* and may only lawfully exercise such powers as are provided to it by virtue of that legislation. That is not to say that in every instance where a First Nation is an employer, the labour relations are federally regulated. Rather, there has been emphasis placed upon the Band's undertaking being within the realm of its normal or habitual activities undertaken in discharging its local governmental functions as empowered by Parliament in the *Indian Act*.

62. For the sake of clarity, I would point out the foregoing cases are not the only decisions in which it has been determined that the employment and/or labour relations of an Indian band are federally regulated. There are numerous other such decisions, however, I have not included them in my review of the jurisprudence as I have focussed on those cases that consider the scope or breadth of a band council's governance responsibilities (see for example: *Norway House Indian*

*Band v. Canada,* [1994] 3 F.C. 376; *Skeetchestn Indian Band v. O.P.E.I.U., Local 378,* [1997] B.C.L.R.B.D. No. 384 and *Tobique Band Council v. Sappier*, [1988] F.C.J. No. 435).

**Decision**

63. The cases in which it has been determined that the labour relations of a First Nation are federally regulated include circumstances where a union is seeking to represent all employees of the band council; the band council has been charged with the non-payment of wages owing to two special constables; a union is seeking to represent employees of a band council engaged in the construction of residential homes; a union is seeking to represent employees engaged in the provision of health care services provided by a separate stand alone Health Authority created by a number of Indian band councils; and a union is seeking to represent nurses employed by a corporation owned by a band council.

64. The status, rights and privileges of First Nation persons are an integral part of federal jurisdiction over Indians and Lands reserved for the Indians. It has been determined that that band governance is closely related to Indian status and is an integral part of primary federal jurisdiction over Indians and Lands reserved for the Indians. The powers and responsibilities of a band and/or its council are delegated to it by the Crown. In determining the scope or breadth of band governance, the cases consider the origin, nature, purpose and function of a band council and conclude that the governance function of a band council is to be broadly described as the administration, organization and maintenance of communal life of band members in a reserve.

65. In the course of determining the scope of band governance, the cases also look to the provisions of the *Indian Act* and any relevant agreements entered into between the federal government and the band council. Where the *Indian Act* or an agreement contains a specific delegation of authority from Parliament to the band, the delegated authority is seen as falling within the scope of band governance.

66. For the reasons that follow, it is my determination that, when NFN connects sewers and watermains to the home of a band member; grades, extends or improves a road in the reserve; or constructs a culvert, it is engaged in its core function of reserve governance.

67. First and foremost, all of the work is performed in the reserve, under the direction of the band council for the collective benefit of the band members residing in the reserve. The grading, improving and extension of roads on the reserve allows band members to travel safely within the reserve. Culverts are a vital part of the system used to drain roads and drives, keeping them safe and extending their lifetimes. The connection of sewers and watermains to homes is necessary in order for band members to have good housing and live in sanitary conditions. What work will be performed and when is determined and driven by the goals set by the chief and council who meet annually and set goals for the upcoming year. One of the goals that have been set by NFN as part of its governance function is sustainable development of infrastructure and community resources.

68. Further, the *Indian Act* specifically delegates to NFN responsibility for the maintenance of the roads, bridges, ditches and fences within the reserve (section 34); the right to consent to the expenditure of capital moneys of the band for the construction and maintenance of roads, bridges ditches and watercourses (section 64(1)(b)); and the power to make by-laws in

respect of the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works.

69. In addition, the construction work performed by NFN is funded by the federal government by way of the Funding Agreement in the very same way as the federal government funds all of the other activities engaged in by NFN as part of its governance functions. The Funding Agreement specifically refers to the construction of physical works as a core funded program. The construction equipment owned by NFN is recorded as assets on NFN's financial statements that it is required to file with the federal government.

70. Notably, the work in issue is completely integrated with the other work done by NFN that falls within its governance function. What work will be performed is driven by NFN's Vision, Mission, goals and budgetary constraints. NFN balances the need to maintain reserve infrastructure with all of the other needs of the band and makes decisions as to what work will be done and when. There are no NFN employees who are engaged exclusively in construction work. There is no department, division or subdivision of NFN that is devoted exclusively to construction work. The division that is responsible for the construction work performed has many other, non-construction responsibilities, such as snow removal, building maintenance and grass cutting. Employees are assigned to construction and non-construction duties without distinction. An employee may spend all, part or none of his or her day on construction duties on any given day.

71. The Union asserts that NFN is only required to "administer" the performance of the work in issue and is not required to perform the work using its own direct employees. The Union argues that the lack of a requirement that NFN perform the work using its own employees supports its position that the employees engaged in the actual performance of the work are not federally regulated. I do not agree. The *Indian Act* imposes obligations and responsibilities on Indian bands. Necessarily the council must hire employees or engage contractors in order to fulfill its obligations and responsibilities. Where council elects to fulfill its responsibilities by having the work done by its own employees, it is acting within its governance function. I am unaware of any case in which it has been held that a band council's governance functions do not extend to the actual performance of work that the council determines is necessary in order for it to fulfill its responsibilities under the *Indian Act* or associated governance functions. Every single case reviewed above involved employees who were engaged by a band, or a separate entity created by a band, to provide services and, in each and every instance, the work was found to be federally regulated.

72. The Union argues that the fact that NFN contracts out larger scale construction projects indicates that the performance of construction work is not part of NFN's governance activities. I do not agree. As I stated above, NFN can elect to perform work falling within its governance functions with its own employees or by way of a contractor. The fact that NFN engages a contractor to perform larger scale construction projects does not take the work that NFN performs using its own direct employees outside of the scope of NFN's governance functions. This is not to say that when NFN contracts out construction work the contractor is subject to federal jurisdiction in relation to that project. Whether a contractor is subject to federal or provincial labour jurisdiction requires an examination of the nature of the contractor's undertaking as a whole, not the nature of the undertaking of one of its clients for which it performs work.

73. The Union argues that there is nothing "inherently aboriginal" in the performance of construction work. I understand the Union to argue that, when performing the functions required to connect a sewer or watermain or grade a road, the work is pure and simple construction work and there is nothing unique about it due to the fact that it is being done by a band member on a reserve. This case falls to be determined on whether the activities in issue fall within the scope of authority delegated to the band and/or council by the Crown. For the reasons set out above, I have determined that they do. As such, it is irrelevant to my determination whether there is anything "inherently aboriginal" about the work.

74. The Union also argues that, if the construction work performed by NFN using its own direct employees were contracted out, the contractor performing the work would be provincially regulated. The Union argues that the construction work should be within the same jurisdiction regardless of whether it is performed by NFN directly or by a contractor. Again, a determination as to the jurisdiction of the labour relations of NFN is to be determined by application of the functional test and not by the constitutional jurisdiction of other unrelated employers engaged in different undertakings. In any event, the provision of similar services by provincially regulated businesses is not determinative of constitutional jurisdiction: see *Sagkeeng Alcohol Rehab Centre Inc.*, [1994] 3 F.C. 449.

75. Lastly, the Union relied on a number of decisions where construction work performed by or on behalf of a federally regulated undertaking was found to be provincially regulated. By way of example, the Union relies upon *Toronto Dominion Bank*, *supra*, wherein it was determined that the construction of a new bank by direct employees of the bank fell within provincial jurisdiction; *Electrical Power Systems Construction Assn.*, *supra*, in which it was determined that the installation of a monorail by direct employees of Ontario Hydro fell within provincial jurisdiction; and *Manitou Mechanical Ltd.*, [1978] OLRB Rep. July 657 in which the Board held that it had jurisdiction to hear a certification application dealing with employees of a contractor performing work in respect of the installation of a conveyor system at an operating uranium mine.

76. In each of these cases, it was determined that the construction work performed was not vital or integral to the federal undertaking. However, in none of the cases relied upon by the Union, in contrast to the facts of the present case, did the very nature of the undertaking in which the employer was engaged place responsibility for the performance of the construction work in issue on the employer. In none of the cases relied upon by the Union was responsibility over the very work in issue part and parcel of the federally regulated employer's undertaking. For example, the Toronto Dominion Bank is federally regulated because it is engaged in banking – a federally regulated activity. It is the banking aspect of its business that makes it federally regulated; the construction work it may or may not do is ancillary to its main banking function. Ontario Hydro is federally regulated to the extent that it is engaged in the production of nuclear energy. It is the production of nuclear energy that brings it within federal jurisdiction; the installation of a monorail system is ancillary to the production of nuclear energy. In contrast, NFN is federally regulated because it is a band as defined in the *Indian Act* to which the federal government has delegated the authority and responsibility to govern reserve lands including responsibility over the construction and maintenance of roads. The construction and maintenance of safe roadways, the installation of culverts and the making of water and sewer main connections is part and parcel of what NFN is required, by virtue of the undertaking it is engaged in, to do. The work in issue is not only integral to a federally regulated undertaking; the work in issue is part and parcel of a federally regulated undertaking.

77. For all of the foregoing reasons, the Board is satisfied that the labour relations of NFN in so far as it is engaged in the construction and maintenance of roadways; the installation of culverts; and the making of water and sewermain connections, fall within federal jurisdiction over "Indians, and Lands reserved for the Indians" as contemplated by section 91(24) of the *Constitution Act, 1867* (U.K.), 30 & 31 Victoria, C. 3. As a result, the Board does not have jurisdiction to entertain this application.

78. Having regard to the Board's determination herein, the Board similarly lacks jurisdiction to entertain Board File No. 1308-10-U.

79. Board File No. 1129-10-R and 1308-10-U are both hereby dismissed.

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**1811-10-G** Universal Workers Union, Labourers' International Union of North America Local 183, Applicant v. **Teston Pipelines Limited**, Responding Party

**Construction Industry Grievance – In upholding a five-day suspension for threatening to kill his foreman, the Board stated that when an event that fits squarely within the definition of workplace violence occurs, an employer is not only permitted but required to act, both to deal with the unacceptable behaviour and to take steps to ensure that its policies are known and understood – In considering discipline in the context of workplace violence, the issue of general deterrence takes on a more prominent role than it might in some other circumstances and nothing will undermine all of the policies and information sessions for employees as quickly as tolerance for an actual incident of workplace violence – The Board found no reason to reduce the penalty: the statement was not said as a "joke" and it was repeated calmly the next day; there was no apology and the grievor believed he was justified in making his statement – Grievance dismissed**

**BEFORE:** *David A. McKee*, Vice-Chair.

***APPEARANCES:*** *Giuseppe Agostino, Severino Silva, Carlos Teodoro* and *Joe Romao* appeared on behalf of the applicant; *Richard Charney, Robert Kaye* and *David Tsai* appeared on behalf of the responding party.

**DECISION OF THE BOARD:** December 2, 2011

1. This application is a referral of a grievance to arbitration pursuant to section 133 of the *Labour Relations Act, 1995*, S.O. 1995 ch.1 ("the Act"). The grievance concerns a five-day suspension imposed on Carlos Teodoro ("Carlos") for threatening twice to kill his foreman on July 27 and 28, 2010. The main fact is not in dispute: Carlos did threaten to kill his foreman on July 27 and repeated the threat on July 28, 2010. There are facts that are in dispute about an incident between the same two employees in December 2009, but that dispute is of limited significance. I conclude that discipline was warranted and that the five-day suspension was appropriate in the circumstances.

2. In this decision, because of the similarity of names and family relationships of some of the witnesses, I have used first names for everyone other than the members of the di Battista

family (as one of their first names is the same as that another witness). The witnesses all referred to each other by first name. I do so for clarity only and do not mean to suggest anything else by this level of informality. I do not believe that it is necessary to examine in detail all of the minor, and natural, differences among the evidence of various witnesses.

3. Carlos is a labourer who was employed steadily by Teston Pipelines Limited ("Teston") since February 2003. He was 45 at the time of the incident giving rise to discipline. His life was filled with personal stress and troubles at that time. He and his wife had separated under circumstances he described as painful. His wife had moved to Montreal and he had care and custody of his children. His situation was known to most people at work at Teston. I accept that he was under considerable stress in both December 2009 and July 2010. That sort of emotional stress is difficult to leave behind when one leaves home and goes to work.

**December 2009**

4. In December 2009, Carlos was working on a job site with a crew that he had been assigned to work with for some time. The foreman was Teodoro Lorefice ("Teodoro"), himself a member of, and in the bargaining unit represented by, the International Union of Operating Engineers, Local 793, but employed as a working foreman. At some point one afternoon, Teodoro became angry at the amount of time he believed Carlos was speaking on his cell phone instead of working. Teodoro was operating a front-end loader at the time. He told Carlos to stop using the phone. It is likely Carlos was making calls related to the care of his children. Harsh words ensued. Teodoro testified that he spoke to him reasonably asking him what was wrong. Carlos testified that Teodoro said: "that's why your wife left you; that's why she did that to you; you're a piece of shit; you're a nothing.". Two other employees likely heard the exchange. Husain Cehic ("Husain") said he heard a lot of swearing and "fuck you" from both of them but nothing as precise as what Carlos alleged was said. Miguel Viera ("Miguel") heard a lot of shouting and swearing but could not remember specific words.

5. Carlos then decided to escalate matters by inviting Teodoro to come down off his machine and say that to his face. Teodoro, for his part, was only too happy to oblige. A fight ensued. There are some differences among those working on the site and the two principals as to the extent of that fight, but essentially all agreed that the two men were grappling with one another pulling at one another's jackets and shirts and shaking one another. No punches were thrown. Husain and another employee intervened and separated them. Carlos went back to his work and Teodoro went back to his machine.

6. At this point there is a divergence of evidence. Carlos says that Teodoro drove the front-end loader towards him, striking him in the shoulder area of his back and knocking him to the ground. Teodoro denies he did any such thing. The evidence of other witnesses is mixed. Husain said that Teodoro did not hit Carlos with the machine, nor did he attempt to do so. He said he could see Carlos from where he was standing near the machine. The ground was icy and frozen and the machine was slipping to some extent. He agreed that an operator of a front-end loader might lower the front bucket rapidly to regain stability if that became a problem as the machine was moving forward. However, he did not remember seeing the Teodoro do that at this time. Another employee, Miguel, said that he did see Teodoro strike Carlos from behind with a front-end loader. He was standing on the opposite side of the machine, but stated that he could see Carlos being hit and toppling to the ground. He said he saw Husain in the area; Husain did

not remember seeing Miguel. Ultimately he identified several other employees who were present, and presumably part of the Local 183 bargaining unit, who were not called to testify.

7. Carlos met and spoke to a supervisor, Raphael Bastone ("Raphael") complaining that Teodoro had hit him with the bucket of his front-end loader. Raphael decided to investigate. He conducted a formal interview of Carlos in the presence of another employee who was fluent in both Portuguese and English to be sure that he understood what Carlos was saying. He testified that he could see Carlos's shirt was dishevelled but he saw no signs of bruising. Miguel said that the sort of blow that Carlos received should leave a mark and ultimately a bruise. There is no evidence as to whether Raphael asked him to remove his shirt or any other article of clothing. He then went to the site and spoke to Teodoro who denied that he had hit Carlos. He asked other employees who were in the area at that time for their observations, but "no one came forward at that time". He did see Miguel on the site during his investigation but could not remember any of the details of his conversation with Miguel. He did not remember seeing Husain that day.

8. Although he said that he had seen Teodoro hit Carlos with a front-end loader, he did not report this to anyone – the police, Local 183 or any member of management. Whether or not Rafael asked Miguel directly, word of Rafael's investigation would spread pretty quickly. His failure to come forward at that time is unexplained. Husain said he did not see Rafael, and gave his story to the employer only when General Counsel to the Employer began to conduct an investigation after the grievance was filed. This weighs against the evidence of Miguel and in favour of Husain.

9. Raphael concluded that Teodoro had not run into Carlos with the front-end loader. He did conclude that there had been a tussle, but that the fight went no further than that. He thought it best to separate the two men, but could not justify any disciplinary action.

10. The other difference at this point is whether Teodoro threatened to kill Carlos at the same time as or just before he allegedly hit him with a front-end loader. That is, if Teodoro did hit him, was it with the intent of committing murder or serous harm, or was it simply a foolishly reckless blow. Carlos and Miguel testified that he did say that. Teodoro and Husain say that he did not say that. More significantly, Raphael said that Carlos did not report such a statement to him on the day that he reported the incident. There is no objective evidence to assist me in this matter. However I conclude that Teodoro did not threaten to kill Carlos.

11. Raphael testified that if there had been a death threat he would have reacted differently. The Union's theory is that he heard the statement and did nothing about it at the time, and further that Raphael was misleading the Board in order to defend a suspension of Carlos for the same offence in July 2010. The fact that Raphael went to the site and sought information from other employees is not consistent with an uncaring attitude. More importantly, neither the Union nor any witness has suggested any reason why the Employer should be more interested in punishing Carlos for this sort of activity than it was in punishing Teodoro.

12. In his cross-examination, when the evidence of Husain was put to Carlos, he alleged that Husain was being untruthful and in fact in December of 2009 Husain had told him that "Teodoro wants to kill you". This was not put to Husain in cross-examination and was not part of his examination in chief. I conclude this is was as much a surprise to his counsel as it was to anyone else, and I conclude Husain said no such thing.

13. In assessing whether or not Teodoro did strike Carlos with a front-end loader, the same difficulty arises. While there should have been some mark or some sign of such a forceful blow with a steel blade, there was no evidence of it. Carlos did not go to a doctor for treatment so there is no medical record. There is no doubt that he did tell Raphael that he had been hit with a front-end loader. It must have been obvious to Carlos that Raphael was looking to determine how badly he had been hurt, but Carlos did not offer to remove his shirt to show him what would have been, at the very least, a reddened area.

14. There was nothing in the incident that was likely to raise the level of conflict from a foolish show of machismo to the level of murder. This was an argument about whether Teodoro could or could not assert his authority to make Carlos do what he wanted them to do. There is nothing in that sort of exchange that would cause Teodoro to become so enraged out of control that he would threaten to kill him or try to kill him. Carlos, on the other hand, was suffering from emotional stress that had nothing to do with his employment. If, as I am inclined to believe, Teodoro did taunt him about his separation, that would no doubt have enraged Carlos. There was, however, no reason for Teodoro to become enraged at Carlos to the extent that it would provoke an assault with a heavy machine.

15. As between Carlos and Teodoro, I prefer the evidence of Teodoro. Although I do not accept the evidence of either one of them as entirely truthful, Teodoro gave his evidence n a more dispassionate manner, and was prepared to admit his wrongdoing in engaging in the tussle. Carlos was still, on an emotional level, heavily invested in his story and felt a sense of outrage that had nothing to do with the outcome of this case.

16. While I acknowledge that it is speculating with little evidence, all witnesses agreed that the ground was slippery to the extent that heavy machinery was slipping. Human bodies are lighter and may tend to slip even more on the same ground. Carlos' work meant that he was standing 4 or 5 feet from the front-end loader. It is possible that he slipped (which would explain what Miguel saw him on the ground) and he might well, in an enraged state just after a tussle, conclude that Teodoro had struck him with the machine. However, this is speculation on my part, and was not a possibility put to Carlos on the stand.

17. Leaving aside that possibility for the reasons given above I prefer the evidence of Teodoro and Husain over that of Carols and Miguel. For these reasons I conclude that Teodoro did not threaten to kill Carlos, nor did he hit him with a front-end loader.

18. Raphael concluded that he was unable to establish to his satisfaction that anything more than a tussle between two employees had occurred. He did not believe he could impose discipline on either employee and thought that it was best simply to separate the two of them. He transferred Carlos to a later shift on a different crew. At the time Carlos said he was content with that change.

**July 27, 2010**

19. The events of July 27 and 28, 2010 are relatively free of controversy on the main points. There are some disputes about certain details. The background is this. In February of 2010 Carlos sustained a workplace injury which resulted in the receipt of WSIB benefits and a restriction on his duties when he returned to work. Those restrictions were accepted by Teston. In June of 2010 Carlos was transferred back to Teodoro's crew. Marco di Battista, the

superintendent and the vice president of Teston, asked both of them if they were prepared to work together again. Both of them said they were and shook hands on it.

20. On June 27, 2010 the workday was scheduled to last until 5:30 p.m., which would mean a 10 hour working day. (Carlos' regular duties finished around 4:00 or 4:30 p.m.) Between 4:30 and 5 p.m., Teodoro saw him on his cell phone. In Teodoro's view this was not the first time that he had been speaking on his phone that day and that he had been speaking on his cell phone entirely too frequently.

21. He ordered Carlos to get off the phone and to get to work cleaning up the debris that was lying around the site. Carlos refused. Teodoro said that Carlos had replied "it's not my job to do that", and that "that's not in my job description". He also testified that Carlos said "I can't do that lifting". Carlos testified that he had said that his medical restrictions made it impossible for him to do that kind of work. The two were communicating in English, their only common language, and Carlos' English is adequate but not extensive. He did, however, raise some issue as to his capacity to do the work being assigned.

22. Carlos believed that Teston must have been aware of his medical restrictions as there were ongoing discussions with WSIB. That is true, but I accept Teodoro's evidence that he was not aware of the details of his restrictions. Teodoro instructed him, if he was on light duties, to pick up the light garbage, such as nylon and strapping which would weigh less than 5 pounds. The Union argued that even that was prohibited by the restrictions imposed by WSIB. I do not believe those restrictions should be read in that fashion. If that was what they meant, clearly there was nothing that Carlos would have been able to do in the normal course of a workday at all.

23. In any event, Teodoro decided not to push the issue. He told Carlos that if there was no work he could do, he was finished for the day and he should go home. Carlos refused to, saying he was entitled to a full 10 hour day and would remain. Although he did not say it at the time, he was also waiting for a ride from another employee who would not be free until 5:30 p.m. Teodoro then exploded angrily calling him a "lazy shit" or a "lazy fuck". While such language is common on construction sites, that is not the way a working foreman should be addressing a member of his crew when there is an issue about whether or not that employee should be following his instructions. However, Carlos' reaction was entirely disproportionate.

24. Teodoro took out his cell phone and called Marco di Battista for instructions. On Teodoro's evidence, he was simply asking his superior for the appropriate course of action. Marco di Battista testified that he asked about whatever light duties or other restrictions have been placed on Carlos' work routine. Teodoro explained that he would not lift up even paper and strapping. He said the job was finishing up but that Carlos claimed he was entitled to stay for a full 10 hours' paid time. He then asked what he ought to do in the circumstances. Before Marco could reply he said that he had a phone call coming from Carlos and so he hung up and took the call from Carlos.

25. There is a further dispute about precisely what Carlos said into the cell phone to Marco di Battista at that point. There is no question that he was shouting and speaking very loudly so that Teodoro and other employees in the immediate vicinity could hear what he was saying. Carlos claims that he told Marco "if you do not do something with that guy…. he tried to

kill me once already and I'll have to kill this guy". Teodoro said he heard him speaking quite clearly and that what he said to Marco was "get this guy [Teodoro] off the job or I'm going to kill him." He said this into the telephone while looking directly at Teodoro.

26. The two employees who testified were called by the Employer and are both members of the Local 183 bargaining unit. Marcello Monti testified that he too had heard him say "you've got to keep Teodoro away from me", and "I'm going to kill him". He said that his tone of voice was serious and was not in a joking manner. Luigi Dodero ("Luigi") was working close to Carlos, as everyone acknowledged. He said he heard Carlos shouting his refusal to do the work saying "I'm not doing that; it's not my job", and that this led to a heated argument. He said he, and he presumed Carlos, heard Teodoro say he was calling Marco di Battista and said into the phone to Marco di Battista "I don't know what to do with this guy." Luigi also heard Carlos call Marco di Battista and say "there are other guys standing around here doing nothing why don't they have to do it. You better get me on another crew. If I have to work with this guy I'm going to kill him."

27. Marco di Battista said Carlos was yelling, saying "I have a problem with Teodoro". He said "you've got to keep Teodoro away from me" and that "I'm going to fucking kill you [or him]" and then he hung up. Marco di Battista then called Teodoro back and told him to pack up the site and leave the job for the day along with the entire crew. Marco di Battista also testified that during his first call with Teodoro, Teodoro complained that Carlos had already threatened to kill him. Given that the evidence of the other witnesses, I believe Marco di Battista is mixing up the contents of the two telephone calls and that the threat to kill was made only during the telephone conversation with Marco.

28. What is significant is the only Carlos claims to have said "… he tried to kill me once already…". No other witness supported the evidence. For that reason, and for the reasons outlined below, I conclude that Carlos did not make any reference to any alleged previous attempt to kill him.

29. Marco di Battista ended his call with Carlos by instructing him to go home at that time and to meet him the next day on the worksite at 6:30 a.m. Carlos did not appear at that time so Marco di Battista called him at 7:00 a.m. Carlos had slept in and said he would be there as soon as he could. He appeared at 8:00 a.m. dressed in clothes that were not suitable for work. Marco di Battista asked him what had happened the day before. He testified that Carlos said at that time that he had an issue with Teodoro earlier in the year and that Teodoro had tried to kill him with a machine. He said that Carlos told him "keep me away from [Teodoro] otherwise I'll kill him." Marco di Battista replied that he was shocked to hear him say that, and Carlos repeated what Marco di Battista took to be an ultimatum to keep him away from Teodoro's crew. He repeated that "he tried to kill me once with some [equipment], before he does that to me I'll do it to him". After a discussion about the need to follow orders from a foreman, the conversation ended. Carlos, I think genuinely, did not understand that there would be any consequences immediately and went home to change. However, before he could return to the job site heavy rain commenced and the job was shut down for the day.

30. Marco sought legal advice from a staff lawyer at Teston, and then called the police. The police did visit Carlos. Carlos put the time of the visit by the police at the afternoon of July 27, 2010. I find that Carlos was simply confused about the sequence of events.

31. Carlos was instructed to stay home the next day. The issue about what to do arose at a senior staff meeting where Marco di Battista repeated what he knew of the incident. The senior management decided on a five-day suspension. Niccolo di Battista, President of Teston, testified that a death threat was a serious matter and that the Company could not simply let it go without a response. He concluded that a disciplinary response was necessary, both to bring home the seriousness of the matter to Carlos and to demonstrate the seriousness of the offence to other employees. At the very least it was best to keep Carlos off the job for a week so he could cool down. When asked why discharge was not chosen, he replied that Carlos was a good worker and he preferred to help people rather than to fire them.

32. A couple of days later while he was leaving the office on business at 10:00 a.m., he ran into Carlos at Teston's office. He said that he talked to Carlos a bit because he did not look right. He had a strange expression on his face. After a minute he invited him into his office to have what turned out to be a lengthy talk with him. Carlos explained his family difficulties, his ongoing disputes with his wife and his difficulty in looking after his children. Niccolo di Battista said that he felt very sympathetic to Carlos and that either he concluded, or that Carlos said, he was thinking of killing himself and putting an end to his life. He said Carlos was talking and crying at the same time. He told him a number of details about his life at that time that do not need to go into this decision. He said that he told them they had been considering a two-week suspension but that he concluded one week was enough. He said he told Carlos that the Company "had to give you a suspension: a death threat is not something that we can ignore". He also said that he was sorry to see Carlos in such difficult straits and that he did not mean to cause him any greater hardship than he was already suffering. In fact, he offered to loan Carlos the money that he was losing during the one-week suspension and Carlos could pay him back whenever he had the money available.

33. The significance of this meeting is not so much a description of the Niccolo di Battista's kindness (although it was certainly that) so much as that it showed the state of Carlos' mind, even two days after the event. His family troubles were still weighing heavily on his mind and he was clearly despondent and depressed. Suicide is often seen as a kind of inverted anger. I conclude on July 27, 2010 Carlo was in the same state of mind. The instruction to pick up garbage, some of which was possibly beyond his medical limitations, was that it was simply a reminder of the yet another cruel blow life had inflicted on him. The explosive eruption immediately after that instruction was a disproportionate response to a simple enough order. That level of emotional turmoil is also not consistent with a clear and precise memory.

34. I conclude that the statement "Teodoro tried to kill me once before" was a fabrication that Carlos came up with that evening. He knew that he had to speak to Marco the next day, and he knew that threatening to kill someone was a serious matter. The incident of December 2009 engaged the same distressed feelings about the breakup of his family that were on his mind on July 27, 2010 and he decided to resurrect his allegation of December 2009. While I believe that Carlos sincerely believed the evidence that he gave before the Board about what happened in December 2009 and what he said on July 27, 2010 was true, I find that it is not. It is a self-justifying embellishment of his story to excuse his behaviour and to bring Teodoro's error to the same level as his own. As a factual matter I do not accept his evidence that Teodoro tried to or did hit him with a front-end loader in December 2009 or that he threatened to do so, or that Carlos made any reference to it on July 27, 2010.

## Decision

35. Both counsel addressed the legal principles they believed are relevant to the case in considerable detail, and supplied the Board with a number of arbitral decisions. The issues, however, are relatively straightforward.

36. No employee should ever threaten to kill anyone else at work, much less his foreman. To do so is it improper and is a culpable offence. Once it is established that such a threat was made, the employer has cause to discipline the employee. That proposition surely needs no authority. The arbitral decisions that counsel referred me to all stand for and accept that proposition and go on to examine the appropriateness of the level of discipline that follows from it.

37. It is conceivable that an employee might use these words as a joke and that everyone present understands it as a joke and it is made in a context where such a joke is not inappropriate. In such cases a joke might not be a matter of discipline. The threat made on July 27, 2010 was not a joke. The employee who heard it did not think it was a joke. Teodoro did not think it was a joke. Carlos did not treat it as a joke even in his evidence before the Board. He was angry at Teodoro with respect to what Teodoro was telling him to do. The repetition of the threat, or prediction, to Marco di Battista indicates that, even in, moments, Carlos meant the threat seriously.

38. The Union argued that the offensive language used by Teodoro was so egregious that any statement made in response was justified. Teodoro's language was offensive, but perhaps not all that dissimilar to words typically used on a construction site. His initial response was certainly an inappropriate response to an assertion of an inability due to the effect of an injury, particularly when that injury is a compensable one. However his second response, which limited his request to picking up garbage that anyone who was capable of doing any work ought to have been able to do, was appropriate. His decision to send Carlos home was appropriate since there was clearly no work he was prepared to do. Hence, what provoked the outburst was a fairly reasonable direction and ultimately one in keeping with the restrictions on Carlos' work. There is certainly no authority for the proposition that an employee is entitled to remain at work when there is no work for him to do and to insist on being paid on an hourly basis. The direction to go home was a sensible one and nothing about it should have provoked an angry response at all, much less a death threat.

39. Accordingly, the Employer had just cause to discipline Carlos. The only other question is whether five days was excessive and whether the length of the suspension ought to be reduced pursuant to section 48(17). The Union had a number of arguments as to why the penalty should be mitigated that are based on a view of the facts that I find to be incorrect. Teodoro did not threaten to kill Carlos, nor did he hit him with a front-end loader in December 2009. Hence there is no basis for the argument that Teston had tolerated the level of violence and death threats in the workplace that made such a threat commonplace, nor was the Employer's treatment of employees inconsistent or irrational. The Union cannot argue that the Employer's inactivity in the face of Teodoro's actions created a belief in Carlos that such a threat was permissible. There is simply no factual foundation for any of these arguments.

40. The Union argued that Carlos was speaking from anger generated in the heat of the moment. I accept that; I would go further. He was completely enraged. Teodoro's directions to

Carlos were reasonable. One would not normally expect that level of rage from such directions. I conclude that much of the emotional fuel for his reaction came from the level of stress he was suffering in his personal life.

41. However, it cannot be said that this sense of anger faded when the immediate events were over. Carlos repeated his threat to Marco di Battista the next day. While more a prediction than a threat on the morning of July 28, 2010, his statement to Marco di Battista was essentially that this was a course of conduct to be contemplated as possible and in some cases inevitable. That statement was not made in a momentary flare-up of anger, and to the extent that it was caused by personal stress, his view of what he was entitled to say and perhaps do, did not change.

42. Finally, at no time did Carlos offer any sort of apology. The significance of an apology lies not any desire to enforce a set of manners. Rather, arbitrators look to apologies fairly close to the event to assess whether the grievor recognizes any wrongdoing on his part. If there was ever a time when it was safe and comfortable to express contrition, it was surely during the very sympathetic interview with Niccolo di Battista. However, no apology was forthcoming until the hearing, even then it only arose from a leading question. Throughout the hearing Carlos demonstrated a considerable emotional investment in his view of what had happened, and frankly a view that stops just short of justification. His testimony was not the evidence of someone who understands that threatening to kill someone else involves wrongdoing. It was the evidence of someone who seeks to justify his own threats of violence. He did not demonstrate any significant understanding that he was in any way at fault. To reduce a five-day suspension would, in the circumstances of this case, tend to reinforce that sense of justification.

43. Workplace threats of violence have always been a matter of serious concern. This level of concern has perhaps been more elevated since introduction in late 2009 of sections 32.0.1 to 32.0.7 to the *Occupational Health and Safety Act*. These provisions did not suddenly create a new area of concern or regulation that had received hardly a passing thought before. The amendments were a reaction to the growing realization that workplace violence is a significant issue in any workplace. The amendments represent a requirement that employers exercise their authority as employers and take what steps an employer can to eliminate such activity.

44. In this context, the Union argued that the Employer had failed to live up to its obligations to provide information and instruction to employees that workplace violence would not be tolerated, by failing to discipline Teodoro for the December 2009 incident. As noted, there is no factual foundation for this argument. In July 27, 2011 Teston was under a statutory obligation to convey to others in the workplace that the type of threat Carlos made would not be tolerated.

45. However, the amendments to the *Occupational Health and Safety Act* and the well-publicized incidents of workplace violence, from the events in Edmond, Oklahoma in 1986 that gave rise to the term "going postal" to the tragic deaths at the Hotel Dieu Hospital in Windsor in 2005 all created a heightened sensitivity to the need to address the causes and incidents of workplace violence before they escalate to more serious harm. Section 32.0.1 defines workplace violence to include:

> A statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

As Arbitrator Newman said about these amendments in the *City of Kingston,* [2011] OLAA No. 393 at paragraph 223 – 224:

> … The theory is that workplace violence is usually foreshadowed. It is, in many cases, predictable. The amendments reflected the view that violence can be prevented if employers, supervisors, and workers, seriously see signs of danger, communicate clearly, in fact with clarity when risk is identified.
>
> Heightened vigilance in respect of violence requires that an employer be proactive in the identification of potential workplace violence. The employer must identify the risks that arise in its workplace by performing a risk assessment, and must inform [the] joint health and safety committee of the results of its assessment. It must develop a policy and program that addresses the risk of workplace violence. It must perform the necessary training and implement the program.

46. Thus when an event that fits squarely within the definition of workplace violence occurs, an employer is not only permitted but required to act, both to deal with the unacceptable behaviour and to take steps to ensure that its policies are known and understood. Hence in considering discipline in the context of workplace violence, the issue of general deterrence takes on a more prominent role than it might in some other circumstances. Nothing will undermine all of the policies and information sessions for employees as quickly as tolerance for an actual incident of workplace violence.

47. The Union cited a number of arbitral decisions dealing with the issue of the appropriate level of discipline and the appropriateness of mitigation of discipline. These issues were first canvassed in a comprehensive way in a discharge case involving *Dominion Glass Company,* (1975) 11 LAC (2d) 84, and the cases cited by the Union in this case all present variations on the themes set out in that decision. Most of the cases the parties referred to dealt with a reduction of penalty from discharge to a suspension, or the reduction in the length of the suspension. The cases cited by the Union are not helpful to its case. In *Dana Canada Inc.*, [1999] OLAA No. 48 (Haefling) a 30 day suspension was reduced to 5 days, primarily because of the history of such shorter lengths of suspension for similar acts. The factors involved in cases where arbitrators have reduced a penalty to less than five days all depend on facts not present here. In *Dancor Enterprises,* [1998] OLRD No. 898 the Board relied on the fact that another employee had not been disciplined for his actions in the altercation for which the grievor was disciplined. In *Carleton University*, 18 L.A.C. (4th) 332, [1990] OLAA No. 179 (Adams) the suspension was reduced to two days because the grievor was suffering physical pain from a hernia likely caused by the other party to the altercation and the history of discipline in the workplace made a longer suspension disproportionate. In *Derlan Aerospace Canada,* [1999] OLAA No. 734 (Palmer) where the grievor apologized immediately, a one-day suspension was substituted. In *Flex'n Gate Canada Co.*, [1999] OLAA No. 760 (Crljenica) an employee told his supervisor that if he was forced to work with another employee "I'll kill him". The arbitrator found that this was not intended as a threat and was simply an expression of frustration and understood as such. It is also not made directly to the other person. Again there was a history one- and two-day suspensions for similar incidents in the workplace.

48. None of these factors are present in this case. Carlos was not simply speaking out of frustration. No one who heard it thought he was making a joke. It may have been said in the heat of an argument (where Carlos was clearly in the wrong) but it was repeated calmly the next day to

Marco di Battista. At that point the statement was more of a prediction then a threat, which ought to give rise to a greater concern on the part of an employer. Carlos had no apologies to offer. He believed he was justified in making his statement and his threat to kill was still very present in his mind. Even if a less severe response might otherwise be appropriate (which I do not accept), that state of mind would surely call for a more significant response. I find that a five day suspension was an appropriate response.

49. The Union argued that Carlos was in fact deprived of more than five days of employment. He was unable to work on July 28, 2010, but that was hardly Teston's fault. He slept in; he attended work without work clothes; and by the time he would have been able to return to the site, rain had ended the day. Marco di Battista told him not to come to work the next day, July 29, 2010 until the Company had decided what to do in response to his threat. The five day suspension was served from July 30 to August 6, 2010 (a three day weekend intervened).

50. I find nothing wrong with the Employer's decision to suspend him for work without pay until it made a decision. The day before Carlos had been talking calmly about the likelihood of killing Teodoro. Even after that Niccolo di Battista, after a lengthy conversation with Carlos, said he felt it was necessary to keep him away from the job for a few days to let him cool down. It would be untenable for Carlos to be working with Teodoro on July 29, 2010. Carlos was still of the view that he had done nothing wrong and that his threat was justified. To have him working with Teodoro would be to run a substantial risk of having the same incident, and perhaps a more serious one occur. Since I find Carlos had engaged in disciplinable behaviour, and showed his frame of mind had not changed the next day, he is not now in a position to demand that the Company ought to have found some other work for him elsewhere for the day. Carlos' record will show a five day disciplinary suspension, although the financial consequences from a suspension without pay pending investigation has make the financial burden somewhat greater than the record will indicate. Again there is no justification for modifying that result.

51. For all of these reasons, the grievance is dismissed.

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**3601-10-U; 3602-10-OH; 4298-10-U; 4299-10-U** Canadian Union of Public Employees, Local One, Applicant v. **Toronto Hydro Corporation,** Toronto Hydro-Electric System Ltd., Anthony M. Haines and Ave Lethbridge, Responding Parties; Toronto Hydro-Electric System Ltd., Applicant v. Canadian Union of Public Employees, Local One and John Camilleri, Responding Parties

**Duty to Bargain in Good Faith – Health and Safety – Strike – Unfair Labour Practice – The Union alleged improper and unlawful surveillance of their occupational health and safety representative and filed applications under s. 50 of the OHSA and s. 96 of the LRA alleging violations of sections 70, 72 and 76 – The employer alleged the union unlawfully disrupted operations by engaging in a public smearing campaign, by turning down overtime shifts, by engaging in illegal strike activity, and by unlawfully disclosing what transpired during negotiations of the collective agreement – The employer filed applications under s. 100 and 96 of the LRA alleging violations of sections 17, 71, 76, 81 and 83 – This decision dealt with preliminary motions brought by both parties to dismiss the other parties' complaints without a hearing – The employer argued that the union's**

**application ought to be dismissed because of: undue delay; failure to make out a prima facie case; an abuse of process; a personal attack which amounted to bargaining in bad faith; and no sound labour relations purpose for the Board to inquire into the application – The Board was not prepared to dismiss the application based on the delay argument stating once the event was crystallized the delay only amounted to seven months and the employer did not suffer significant prejudice – The Board, relying on the factors in *Wal-Mart Canada*, determined there was no real labour relations purpose to be served by continuing to litigate the complaints – The alleged surveillance took place three years ago and had no discernible impact on either party and the underlying surveillance issue had been resolved in a collective agreement which was midway through its term – In these circumstances, on the consent of the employer, the Board also dismissed the employer's complaints – Applications dismissed**

**BEFORE**: *Bernard Fishbein*, Chair, and Board Members *J. A. Rundle* and *D. A. Patterson*.

***APPEARANCES:*** *Mark Wright, Stephanie Hobbs, John Camilleri, D. Philbott* and *Joseph Pessoa* for CUPE Local 1; *Jason Hanson, Lorraine Chan, Golbon Mehrabkham, Helia Ralph* and *Greg London* for Toronto Hydro.

**DECISION OF THE BOARD**; December 1, 2011

1. The above matters are:

   (a) applications filed by the Canadian Union of Public Employees Local One ("the Union") on January 31, 2011 under section 96 alleging violations of sections 70, 72 and 76 of the *Labour Relations Act, 1995,* R.S.O. 1995, c.1, as amended (the "Act") (OLRB File No. 3601-10-U) and an application under section 50 of the *Occupational Health and Safety Act* ("OHSA") (OLRB File No. 3602-10-OH) ("the Union complaints"); and

   (b) applications filed by Toronto Hydro-Electric System Ltd. ("Toronto Hydro") on March 30, 2011 under section 100 of the Act alleging an unlawful strike (OLRB File No. 4298-10-U) and under section 96 of the Act alleging violations of sections 17, 71, 76, 81 and 83 of the Act (OLRB File No. 4299-10-U) ("the Toronto Hydro complaints").

The Union complaints are virtually identical. The same is true for the Toronto Hydro complaints.

2. The Board heard four days of preliminary motions by the parties with respect to why the opposite party's complaints ought to be dismissed without a hearing. This is the decision dealing with those preliminary motions.

## General Background

3. There is no dispute that the Union and Toronto Hydro have been bound for many years to a series of collective agreements covering approximately 1200 clerical, technical and

trades employees, the most recent of which is effective from 2009 until 2014 ("the current collective agreement"). In fact, negotiations for the current collective agreement commenced early and were concluded before the expiry of the previous collective agreement.

4. Anthony Haines ("Haines") and Ave Lethbridge ("Lethbridge") whom the Union has also made individual responding parties, are the President and Chief Executive Officer of Toronto Hydro and the Vice-President, Organizational and Effectiveness and Environment, Health and Safety and Toronto Hydro's Integrity Officer, respectively.

5. John Camilleri ("Camilleri") is the President of the Union. Joe Pessoa ("Pessoa") is the Union's Health and Safety Representative. The Health and Safety Representative is an elected union position which Pessoa has held for approximately 12 years, and whose salary is paid by Toronto Hydro. That position was the subject of some difficult negotiations in the most recent round of bargaining. The current collective agreement now has a Letter of Understanding describing the Health and Safety Representative's job duties and agreeing that his wages will now be shared equally between Toronto Hydro and the Union (with the proviso that Toronto Hydro could request reimbursement for its share in the event of a negative job performance of the Health and Safety Representative). This was a compromise reached after Toronto Hydro's initial proposal to eliminate Pessoa's position (the Health and Safety Representative) from the collective agreement altogether.

6. Equally, there is no dispute that at least in the spring and fall of 2008 (that is prior to the commencement of any negotiations for the current collective agreement) Pessoa was the subject of some covert surveillance by Toronto Hydro.

**What the Union complaints are about**

7. Essentially, the Union alleges that Toronto Hydro improperly and unlawfully engaged in surveillance of Pessoa because he was a union official and because he was the Health and Safety representative. The Union alleges that it became aware in June 2010 from a "highly credible source, upon whom the Union does not intend to rely in support of the application" that Toronto Hydro had engaged in covert surveillance, including video surveillance of Pessoa during 2008. The Union alleges that it raised this in a meeting with Toronto Hydro on June 8, 2010 attended by senior Toronto Hydro executives (including Lethbridge) and inquired about the truth of these allegations. Lethbridge denied the allegations. However, the Union was not content with the denial and gave Lethbridge at the meeting a letter from Camilleri to Haines (which was attached to and incorporated with the Union complaints). The Union in its letter alleged that Pessoa had "been under surveillance by Toronto Hydro and was followed on his off duty hours for no legitimate workplace purpose" and demanded "a written record of all current and past surveillance of Pessoa, including time, dates and locations".

8. That letter was responded to by two different letters from Lethbridge (which were also attached to and incorporated with the Union complaints). In particular, a letter was entitled "Re your letter re video surveillance of CUPE Local One officials", which, as it played such a significant part in the parties' submissions, is worth quoting at length:

> Toronto Hydro is not and has not undertaken video surveillance of Joe Pessoa or any other CUPE Local One official. Of course, the video cameras stationed at various locations at the workplace may

> pick up images of Mr. Pessoa or other union officials, but you clarified that was not the purpose of your inquiry.
>
> As you know, Toronto Hydro has in the past undertaken video surveillance in order to investigate allegations of misconduct. Where there is an issue to be addressed, I think you would agree that we are open with you in sharing the video surveillance results and, further, I think both management and the Union make improved decisions in evaluating alleged misconduct with such surveillance evidence. As you know, Toronto Hydro has a number of commitments to integrity and ethical conduct, both contractual and as a matter of general law and, of course, video surveillance is regarded by Toronto Hydro as a legitimate investigative tool.
>
> I do not know where you heard the rumour that Mr. Pessoa has or had been subjected to any kind of video surveillance. It is completely untrue. Indeed, in 2008, management explicitly decided not to undertake video surveillance of Mr. Pessoa. You might be interested to know that on several occasions in 2008 various non-management sources made Code of Ethics complaints about Mr. Pessoa leaving the workplace and receiving pay while doing no work. You will recall that Mr. Pessoa leaves himself open to those kinds of allegations because he failed (despite repeated requests) to complete his time sheets and vacation request forms. In any event, after a preliminary assessment, we decided that there would be no video surveillance of Mr. Pessoa.
>
> Regrettably, Mr. Pessoa continues to delay completing his time sheets and vacation request forms. So long as he continues to do that, should any other Code of Ethics complaints be lodged against Mr. Pessoa, Toronto Hydro may take further investigative steps. However, I repeat, there is no such surveillance investigation underway.

Quite simply, the Union did not accept Toronto Hydro's denials and sought documents from Toronto Hydro relating to surveillance of Pessoa in his capacity as a union official pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). There was some procedural wrangling between Toronto Hydro and the Union about the niceties and technical requirements of this request. Finally, on January 21, 2011, Toronto Hydro produced documents which the Union alleges "confirms that contrary to explicit representations made by the responding parties in June 2010, Toronto Hydro was engaged in an extensive campaign of covert surveillance of Pessoa during much of 2008". The documents were attached to and incorporated with the application as well. They are essentially invoices to Toronto Hydro from Navigant Consulting and its security subcontractor for surveillance of Pessoa for periods in 2008.

9. The Union alleges that this constitutes unjustified surveillance of a union official over the course of at least March to November 2008, contrary to both section 50 of OHSA and sections 70, 72 and 76 of the Act. The Union alleges that this conduct was at least in part a direct consequence of Pessoa's efforts to seek enforcement of OHSA and its regulations and posed a

threat to the most important objects of both statutes resulting in real danger to the employees of Toronto Hydro and an attack on the Union representative's capacities and rights. The Union further alleges that when confronted with its improper conduct, Toronto Hydro deliberately "lied" to the Union to "cover up" this misconduct.

10. The Union seeks extraordinary and unprecedented relief in its complaints, including written apologies from Toronto Hydro, Haines and Lethbridge and distribution of such apologies and any order of the Board to, *inter alia*, employees, the Board of Directors and the customers of Toronto Hydro, notices not only to be posted in the workplace but published in five successive editions of the Toronto Star and the Toronto Sun, $25,000 in damages to Pessoa, a $100,000 donation in the name of the Union to Sunnybrook Hospital, and $100,000 in damages to the Union (as well as an order that it be reimbursed its cost in bringing the applications).

11. The Union filed its complaints on January 31, 2011.

**What the Toronto Hydro complaints are about**

12. The Toronto Hydro complaints were filed on or about March 30, 2011. They are obviously in response to the Union complaints (in addition to the responses that Toronto Hydro filed to the Union complaints) and allege a different narrative.

13. Toronto Hydro alleges that the Union is engaged in conduct that violates sections 17, 71, 76, 81 and 83 of the Act. In particular, in its complaints, Toronto Hydro alleges that the filing of the Union complaints to the extent that they disclose what transpired in the collective bargaining negotiations (and in particular the legitimate raising of the questions of the Health and Safety Representative and the negotiations to resolve that issue) constitute a breach of the Union's duty to bargain in good faith under section 17 of the Act. Moreover, after being advised by Toronto Hydro that any investigation of Pessoa was solely in response to multiple complaints that Pessoa was breaching Toronto Hydro's Code of Business Conduct (and in particular, leaving work either for unauthorized purposes or early) which investigation concluded in 2008 and, although finding some basis for some complaint about Pessoa's conduct, did not result in any discipline or sanction against Pessoa, Toronto Hydro alleges the Union has engaged in a campaign that violates Sections 17 and 76 of the Act. In particular, the Union has repeatedly and publicly demanded the firing of Haines and Lethbridge both in union newsletters, press releases, and letters to other public officials and by picketing various locations of Toronto Hydro on various occasions. As well, Toronto Hydro alleges that the Union has threatened, called, authorized, counselled, procured, supported, encouraged and caused illegal strikes contrary to sections 79(6), 81, 83 and 76 of the Act. According to Toronto Hydro, the Union has done this by campaign throughout December 2010 and February 2011 to encourage employees not to apply for vacancies in a newly-created Certified Power Service Representative ("CPSR") position and has convinced or forced virtually all of the applicants for that CPSR position to either withdraw their applications or resign from the position after it was offered to them. As a result, Toronto Hydro alleges that it was compelled to abandon, at least temporarily, its plans to create the CPSR position.

14. Toronto Hydro further alleges that for the same time in February of 2011, at the Union's behest, other employees acted in concert to disrupt its operations by cancelling, scheduled overtime, cancelling regular shifts, declining requests to work overtime and avoiding calls to work overtime.

15. As well, in further additional particulars filed after the Toronto Hydro complaints (which were filed on June 8, 2011) Toronto Hydro alleges that the Union continued to violate Sections 76, 81 and 83 of the Act when employees refused to work overtime already scheduled and which they already agreed to work over the weekend of June 3-6, 2010, after a dispute with the Union over Toronto Hydro's changing of a work procedure.

16. As noted above, both Toronto Hydro and the Union made preliminary objections as to why the others' complaints ought to be dismissed without a hearing. As noted above, those motions consumed several hearing dates. The Board deals with them below.

**Toronto Hydro's motion to dismiss the Union complaints**

17. Toronto Hydro argued that the application ought to be dismissed because:

(1) the application fails to make out a *prima facie* case against any of the respondents;

(2) the application should be dismissed because of undue delay;

(3) the application is an abuse of process in that the application deliberately misleads the Board, the Union orchestrated a public appeal to the Minister of Labour concerning the application and the Union has demanded the termination of employment of the individual respondents;

(4) The application is a personal attack on the individual respondents Haines and Lethbridge for their roles as manager and representatives of Toronto Hydro in the collective bargaining process and therefore amounts to bargaining in bad faith by the Union contrary to section 17 of the Act;

(5) No sound labour relations purpose exist for the Board to inquire into the application.

18. Toronto Hydro conceded that many of these arguments overlapped and were not "watertight compartments". The Board will deal with them not necessarily in the order that they were argued.

**A. Delay**

19. Toronto Hydro points out that the Union, at least from the exchange of letters with Lethbridge in June 2010, knew that there existed and always had existed video surveillance in the workplace without challenge by the Union, that Pessoa had been investigated and that Toronto Hydro reserved to itself the right to take further investigative steps in the future, including video surveillance if other complaints were made about Pessoa. Yet, Toronto Hydro argues, the Union complaints were not filed until the end of January 2010, some seven months later.

20. The Union in response points out that it sought further particulars from Toronto Hydro about the nature of the surveillance of Pessoa in 2008 and that Toronto Hydro did not produce

those particulars. Rather, in the Union's view, it "covered up" what happened. The Union argues that when Toronto Hydro did not cooperate, it was compelled to make a request under MFIPPA for documents. After groundless objections by Toronto Hydro, the documents were not produced until January 21, 2011. When those documents confirmed that there was a campaign of covert surveillance of Pessoa during 2008, the Union complaints were filed within a week or so.

21. Although these allegations relate to surveillance that occurred in 2008, approximately a year and a half before the filing of the application, the surveillance was covert. Accepting that some form of surveillance was disclosed to the Union in June of 2010, Toronto Hydro was not forthcoming about the extent of it, notwithstanding the Union's demand for further information. Certainly, the extent of the surveillance did not crystallize until the Union was able to obtain and review the documents produced pursuant to the MFIPPA request. The Board certainly does not accept or condone parties sitting on crystallized disputes for some period of time before commencing proceedings before the Board. The Board accepts that the period ought to be measured in "months rather than years" (see *Corporation of the City of Mississauga*, [1982] OLRB Rep. March 420 at paragraph 22).

22. However, Toronto Hydro points to no significant prejudice it suffered as a result of the alleged delay. Nor did Toronto Hydro assert (nor could it) that it was "lulled" into any false sense of security during this interval that this matter had been resolved or disappeared. However, even measuring the delay, as Toronto Hydro argues, from June of 2010, the delay amounts to only seven months. Even accepting that June 2010 is the appropriate time from when to measure any alleged delay (and not from January 2011 when the Union finally received the documents from Toronto Hydro), not surprisingly, Toronto Hydro pointed to no Board decision where delay of this amount was fatal to the application at the outset. Even the case Toronto Hydro referred to, *Eastern Welding*, [1994] OLRB Rep. June 673, the delay amounted to 8-1/2 months – and there was no argument in that case that the responding party possibly contributed to the delay.

23. Accordingly, the Board is not prepared to dismiss on a preliminary motion the Union complaints solely on the basis of delay.

### B. Abuse of process

24. Toronto Hydro argues that the filing of the Union's applications is such an "abuse of process" that alone should be sufficient to warrant the dismissal of these applications at this stage. Toronto Hydro refers the Board to *Canam Enterprises Inc. v. Coles*, 51 O.R. (3d) 481 (Ont. C.A.) at paragraphs 31 and 55 and *Toronto (City) v. CUPE 79*, [2003] 3 S.C.R. 77 (SCC). Leaving aside that these are Court cases that explicitly root "abuse of process" in the inherent and residual authority of the Court (and not a statutory tribunal like the Board) and that arise in clearly distinguishable factual contracts, for purposes of this case the Board will assume that it could dismiss these applications for abuse of process if it wished to do so. Equally, for the purposes of this motion, the Board, for the present, will ignore the fact that Toronto Hydro largely points not to the Union's pleadings (as it should for a preliminary motion) but to its own.

25. Essentially, Toronto Hydro argues the Union by calling on the Minister of Labour to conduct a special investigation into the covert surveillance and alleged harassment of Pessoa, while contemporaneously filing the Union complaints is both an attempt to "intimidate" the Board (since at least for administrative and budgetary purposes the Board reports to the Minister) and undermines confidence in the Board and brings the administration of justice into disrepute by

calling for the Minister to get involved at the same time as proceeding before the Board. Equally, Toronto Hydro asserts that the Union's public appeal to have Haines and Lethbridge fired reveal that these applications are filed not for a sound labour relations purpose but for an improper purpose – "the Union's true objective is the termination of Toronto Hydro's executive team and collective agreement negotiators" – which is in and of itself an abuse of process. Lastly, Toronto Hydro asserts that the Union's attempted use of the collective bargaining discussions about the Health & Safety representative position and attempting to characterize them as attacks on Pessoa's character by Lethbridge is a denial of the necessity for frank and honest discussions in collective bargaining and thereby a violation of the Union's duty to bargain in good faith pursuant to Section 17 of the Act.

26. Quite simply, the Board is not persuaded. Leaving aside whether there are other more appropriate means for the Board to prevent any abuse of process or of its procedures than dismissing the Union complaints at such a preliminary stage, it is difficult to conceive how the Union complaints (albeit aggressive, passionate and arguably hyperbolic) are "abusive". As the Union notes, labour relations problems and disputes are frequently played out (and even resolved) in many forums, of which proceedings before the Board may be only one. Would the Board be concerned if while litigating unfair labour practices before the Board, a trade union continued an otherwise lawful strike? Sought legislative reform? The obvious answer is no. Toronto Hydro is a public utility. That the Union may appeal to the public or Government Ministers at the same time as proceeding before the Board does not mean that proceedings before the Board should be *per se* dismissed preliminarily (and that is what Toronto Hydro seeks – not, for example, a stay until such public appeals ceased). This seems particularly true when the employer is publicly owned. Perhaps there would be some merit to Toronto Hydro's position if the Union was pursuing mutually exclusive legal paths (e.g. arbitration, etc.) contemporaneously – but that is not the case here. The Board is simply not intimidated (or, with all due respect, particularly concerned) that the Union has requested the Minister to investigate the same or similar allegations that form the basis of the Union complaints, or that the Union may contemporaneously be calling for the termination of the executives of a public utility. If that actually is a violation of section 17 of the Act (an allegation that already forms part of the Toronto Hydro complaints and whose legal merit is vigorously disputed by the Union), it requires an adjudication on the merits and ought not to be dismissed preliminarily as an alleged abuse of process.

27. For all of these reasons, the Board rejects Toronto Hydro's argument to dismiss the Union complaints as an abuse of process.

### C. No *prima facie* case

28. Toronto Hydro also submits that the Union complaints should be dismissed because they do not, the hyperbole notwithstanding, make out a *prima facie* case of any violation of the Act.

29. Toronto Hydro says the Union complaint essentially is that there was an investigation (including surveillance) of Pessoa and Lethbridge's letter somehow "covered up" or "lied" about it. There is no dispute that both Pessoa (and the Union) were unaware of the investigation and surveillance at the time it took place and there have been no consequences of the investigation/surveillance imposed on Pessoa or anyone for that matter – no penalty, no reprisal, no discipline, no sanction, etc. In these circumstances, says Toronto Hydro, there can be no violations of the Act or OHSA.

30. In terms of OHSA, Toronto Hydro points to the decision in *Alcohol and Gaming Commission of Ontario*, 2009 CanLII 37562 (ON LRB) at paragraphs 19 and 20:

> 19. For the purposes of this decision, I am prepared to assume (without making any finding) both that the situation the applicant asserts existed in her workplace from the fall of 2005 until the end of February 2006 could constitute an unsafe workplace under the Act, and that the applicant clearly characterized it as such to her manager, Mr. Grewal. Even assuming that to be the case, however, there is nothing that occurred to the applicant after that date and prior to her filing the First Application that could be characterized as a reprisal: she was not dismissed or disciplined; and she suffered no economic disadvantage. The economic disadvantage that the applicant complains of in her application – her payment at Level 2 in the position she assumed in August 2005 – occurred well before she asserts that any trouble ever started with Ms. Hari and obviously well before she could have complained to Mr. Grewal about such trouble.
>
> 20. Insofar as the Second Application is concerned, there is no reasonable likelihood that the AGCO's representatives' refusal to be in the same room with the applicant at an LRO meeting (even if this assertion is accurate) could constitute a reprisal under section 50(1). There is simply no meaningful consequence to the applicant's employment status or to the terms and conditions of her employment occasioned by that behaviour. Similarly, correspondence from the AGCO advising the applicant that the provisions of the collective agreement (to which both the AGCO and OPSEU are party) may deem her employment to have been terminated should she fail to return to work cannot possibly constitute a threat by the employer to terminate her employment. The assertion that the AGCO supplied misinformation to the insurer is simply a bald assertion, unsupported by particulars. The AGCO has denied having any contact with the insurer at all about the merits of the applicant's claim, and asserts that it merely provided the applicant upon her request with an application for LTD benefits. In any event, the complaint about misinformation (even if properly particularized) does not clearly fall within the kind of conduct proscribed by section 50(1). Furthermore, even if such misrepresentation could constitute a contravention of section 50(1), it is not apparent to me what remedy the Board could offer for it beyond a declaration that section 50(1) had been contravened. (*emphasis added*)

31. Toronto Hydro says essentially the same thing about the allegation of violation of section 70 of the Act. There are no facts alleged that actually show some interference with the Union. Certainly it had no impact on collective bargaining as a collective agreement was reached well before any of this was disclosed and the Union's complaint filed. There is no dispute that Pessoa was not even on the Union bargaining committee so there can be no violation of the duty to bargain in good faith in section 17 of the Act, Toronto Hydro asserts.

32. Similarly, none of the specific conduct prohibited by section 72 is alleged to have occurred. Pessoa continues to work for Toronto Hydro and no penalty was imposed on him and certainly no threats made as he was unaware of the investigation and surveillance. This applies equally to any alleged intimidation or coercion prohibited by Section 76. Moreover, Toronto Hydro argues, even if covert surveillance of which the subject is unaware could somehow be sufficiently coercive or intimidatory to violate section 76, it must be to "compel" for one of the listed purposes - and how can one be compelled to do something by something one doesn't know about? Lastly, Toronto Hydro argues, it is not even alleged that all of this is for any of the necessary objects of the compulsion required under section 76. To further support these arguments, Toronto Hydro notes that no relief is sought to "unwind" or "undo" anything done to Pessoa.

33. Toronto Hydro says that even if Lethbridge's letter was a "cover up" or "lie" (an allegation which Toronto Hydro does not admit but for purposes of its *prima facie* argument must accept), that equally cannot violate any provision of either OHSA or the Act. Moreover, Toronto Hydro says that even if there was somehow interference with the trade union by its conduct, and it points out that even section 70 of the Act allows for employer free speech provided it is not intimidatory or coercive, the Board jurisprudence indicates that the interference must be more than incidental and it refers to *City of Belleville*, [2009] OLRB Rep. January/February 36 at paragraphs 33 to 35 and the cases cited therein.

34. Not surprisingly, the Union takes a completely different view. The Union says for this case to be dismissed, the Board would have to find that Toronto Hydro decided to engage in covert surveillance of Pessoa to discredit him and eliminate that position in collective bargaining and that Lethbridge lied to the Union in an attempt to cover up what had occurred and that did not constitute a violation of the Act. Though undoubtedly put that way for its dramatic impact, the mere fact that there was covert surveillance of Pessoa in the circumstances and assuming that Lethbridge was not forthcoming about it, does not in and of itself constitute a violation of the *Labour Relations Act*. It may be unacceptable or even unethical conduct but, sadly, that is not the equivalent of a violation of the *Labour Relations Act*.

35. The Union says that the Board has always taken a dim view of surveillance. It begins its analysis with the Board's seminal decision in *K-Mart Canada Limited (Peterborough)*, [1981] OLRB Rep. Jan. 60 with the observation that:

> "In Ontario, however, an employer may not use surveillance to intimidate employees from exercising their rights under the *Labour Relations Act.*"

The Board noted that surveillance had a corrosive effect, even when not covert:

> "70. Individuals who are aware of surveillance being conducted by authorities against a legitimate activity may come to redefine the activity as being somehow illegitimate and tend to avoid any association with it. …
>
> The fear of surveillance can have a spill-over effect into union meetings and private encounters off the employer's premises. Employees who know that surveillance is being conducted at the work place can never be certain that it is not going on elsewhere. Askin, in *Surveillance: The Social Science Perspective* (4 Columbia Human Rights Law Review 59 (1972) at p. 73)

> relates the following observation from a study made by a team of social and behavioral scientists:
>
> > Actual surveillance of an individual or group or of a particular event, political or otherwise, is not an essential element for chill to occur. With public knowledge that surveillance has occurred and is continuing to occur, the individual's perception of the actual event has been influenced. Based on the expectation that surveillance might be going on, people exhibit the same verbal inhibitions as if they were certain through direct knowledge that a surveillance agent were present."

The Union further refers us to the Board decision in *Royalguard Vinyl Co.*, [1994] OLRB Rep. Jan. 59 where the Board was prepared to find that the installation of surveillance cameras was either a condition of employment or a privilege within the meaning of section 81(2) of the Act and therefore a violation of the freeze period.

36. The Union then points us to *Radio Shack*, [1979] OLRB Rep. Dec. 1220 where, in discussing the surveillance conducted by the employer, the Board said at paragraph 71:

> "We further find that the hiring of the private investigation firm to perform the service it did and the hiring of persons Gallagher knew to be informants to infiltrate and obtain information about the union and its supporters amount to flagrant violations of sections *56, 58,* and 61 of *The Labour Relations Act.* These actions, without rebuttal testimony, must be seen as going hand in hand with the termination of two employees and the threat of plant removal which the Board, in earlier proceedings, also found to be in violation of the Act. We have difficulty in imagining conduct that could be in greater conflict with an employer's obligations not to interfere with the selection of a trade union (section 56) and not to intimidate employees exercising their rights under the Act (section 58 and 61). Even if the employees lacked the knowledge that they were being watched and reported on, we are of the opinion that surveillance activity can only have purposes of aiding an employer in "interfering" with the selection of a trade union and in "coercing" and "restraining" employees from engaging in protected activity and, with these purposes, constitutes a *per se* violation of sections *56, 58,* and 61 of *The Labour Relations Act."*

37. The Union also points us to the decision in *Securicor Investigation and Security Ltd.*, [1983] OLRB Rep. May 720 where the Board quotes both *K-Mart* and *Radio Shack* with approval and also quotes from the NLRB decision in *Re Wallace Press Inc.*, 56 LRRM 1037, (1964):

> Few propositions are more fully embedded in the law of labour relations than that an employer who spies upon the union activities of his employees engages in a flagrant violation of the rights guaranteed by section 7 of the Act. Such conduct has been condemned by the Board and the Courts since the early days of the Act, for experience has shown that employers resort to labour espionage or surveillance for the purpose of obstructing and destroying employees' self-organizational rights and activities. If such first steps leading to discriminatory practices are outlawed, the commission of other unfair labour practices may be thwarted."

So the Union says the Board has condemned surveillance in the harshest terms whether the person who is the object of the surveillance knows about it or not. The Union urges us to adopt an approach akin to the approach of the Board in Section 1(4) applications demonstrated in *Guaranteed Insulation '77 Limited,* [1981] OLRB Rep. Oct. 1394. There the Board indicated that because the sale and the manner in which the disposition of a business has been done is within the particular knowledge of the responding parties, not much can be expected in the way of particularity or specifics from an applicant union. The Union asserts that is analogous to the situation where the surveillance was covert.

38. Leaving aside for a moment that *Guaranteed Insulation, supra,* deals with specific statutory provisions (section 1(5) and section 69(13)) which impose a reverse evidentiary onus on a responding party, the Union argument is somewhat simplistic and overlooks the nuances of the Board jurisprudence. The surveillance comments in most of these cases are made either with respect to organizing campaigns or immediately following organizing campaigns and were one of a number of other violations of the Act that the Board was concerned with. Second, that is obviously not the same as a long-standing and mature union/employer collective bargaining relationship and whatever the merits or *bona fides* of the surveillance here, it cannot be in any way construed to be an attempt to "break" either the union or defeat an organizing campaign. More importantly, the jurisprudence does not go so far as to establish that surveillance *per se* breaches the Act. Even in *K-Mart, supra,* quoted with approval in *Securicor*, the jurisprudence the trade union relies upon, the Board noted at paragraph 71 immediately preceding the portions the Union referred us to:

> "Surveillance can have a legitimate application in the workplace. An employer may, for example, have to use one form or another of surveillance to protect its property against theft and vandalism or to monitor machinery and processes to ensure the safety of employees."

The Lethbridge correspondence which the Union relies on and incorporates into its application, Toronto Hydro clearly indicates the surveillance was undertaken because of complaints of "Pessoa leaving the workplace and receiving pay while doing no work" – certainly a legitimate employer interest.

39. Even the arbitral jurisprudence absent the admissibility of surveillance evidence (and in particular video surveillance) no longer focuses on whether it is permissible *per se* but on the competing values of admissibility determined solely on whether evidence is probative or relevant versus some limited rights of privacy and admissibility determined on whether an employer has reasonable grounds to believe employee misconduct is occurring (see *Canadian Labour Arbitration*, Brown & Beatty, at paragraphs 34202 and 34203). When this was pointed out to the Union by the Board, the Union sought to distinguish this by saying those were collective bargaining rights as opposed to statutory rights. Although true, this does not appear to be a salient distinction. Moreover, as the Lethbridge letter makes clear, this is a workplace where Toronto Hydro has for some time not only engaged in overt surveillance by way of cameras throughout the workplace, but previous covert surveillance to investigate other employee misconduct – all apparently without previous Union objection.

40. The Board does not wish to assert that surveillance of union officials (even covert) in an established bargaining relationship can never violate the Act. Equally, union officials are not immunized by virtue of their office from the consequences of improper conduct or reasonable

employer efforts to investigate such misconduct. The difficulty here is that the Union essentially alleges only conclusions - that the surveillance was because Pessoa was exercising rights under the Act and therefore he is being intimidated, coerced, punished, harassed, discriminatorily treated and the Union interfered with. But other than Pessoa was the Health and Safety Representative, there are no other material facts alleged. In fact, the bulk of the Union's complaints are not about the surveillance of Pessoa (which is admitted) or its impact on Pessoa or the Union, but about the Union's attempts to confirm it once it became aware of it some eighteen months later. Certainly there is no dispute that no discipline was imposed on Pessoa. The status of the Health and Safety Representative was already an issue between the parties. That was resolved between the parties in the collective agreement negotiations long before the surveillance of Pessoa became public let alone an issue. The simple fact is there is no actual impact alleged either on Pessoa or the Union, other than their outrage and moral indignation.

41. The Union says they "caught" Toronto Hydro and Toronto Hydro "lied" about this. Even assuming this to be true (and it appears to depend on the Union having obtained some invoices to Toronto Hydro for surveillance and Lethbridge's denial of surveillance in her letter, although Toronto Hydro characterizes that as a denial of only video surveillance), it is unclear how this alone transforms this conduct (again regardless of how unacceptable it might be) into a breach of the Act.

42. In the end, although dubious, the Board, in view of its conclusions, *infra,* about mootness and no labour relations purpose, need reach no definitive conclusion on whether there is a *prima facie* violation of the Act made out in the Union complaints.

## **D. No labour relations purpose**

43. Toronto Hydro also submits, regardless of whether the Union complaints make out a prima facie case or not, the Board, exercising its discretion, ought not to proceed any further with these complaints because the subject matter of the dispute is effectively moot and no labour relations purpose will be served by proceeding further.

44. The Board recently summarized the jurisprudence in *Wal-Mart Canada Corp.*, [2011] OLRB Rep. July/August 490, at paragraphs 50-54:

> 50. In view of the above, Wal-Mart submits that there is no labour relations purpose for the Board to inquire into these applications at this point in time, and in particular, the UFCW ULP. If the UFCW ULP is dismissed, there is nothing else calling into question the results of the representation vote and it must also accordingly be dismissed. Wal-Mart concedes that should this argument prevail, it also applies to Wal-Mart's ULP which should also be dismissed.
>
> 51. The Board's jurisprudence with respect to its discretion under section 96 of the Act is well-established. The Board possesses discretion whether it will inquire or not inquire into an unfair labour practice complaint, and, in particular, because proceeding further serves no labour relations purpose. That is because:
>
> > "It is important for the Board to expend [its] limited resources in a way that is consistent with the objectives of the statute, will best accomplish

> its statutory mandate, and is sensitive to practical labour relations realities".

See the frequently cited *SEIU Local 204*, unreported decision dated January 16, 1995, OLRB File No. 3431-94-U.

52. That discretion may be exercised at any point in the Board's proceedings. The factors that the Board will look at in determining whether to exercise its discretion not to inquire into a complaint are set forth in many cases and include:

(a) delay in filing the complaint;

(b) whether the case makes out an arguable case for breach of the Act;

(c) the likelihood of success;

(d) the nature and utility of any remedy that might flow;

(e) the cost implications for the parties and the public;

(f) whether some statutory or labour relations purpose is to be served by the litigation exercise.

As the Board has repeatedly observed, the question of whether there is a labour relations purpose in proceeding with a section 96 complaint is a separate question from that of whether a prima facie case of a violation of the Act has been made out or whether the Board has the jurisdiction to grant the relief sought. The Board cases have simply summarized the issue as:

> "The question of whether there is a labour relations purpose to be served by the litigation exercise has typically been determined by comparison of the labour relations reality that prompted the complaint in the first place, as compared to its reality at the time that the question of exercising the discretion arises. The Board asks itself two questions: Does the situation that prompted the applications still exist; and/or does the relief requested still make sense?"

See *Stock Transportation Ltd.*, 2006 O.L.R.D. No. 2350 at paragraph 13.

53. The parties do not dispute this general jurisprudence. In fact, the parties referred the Board to essentially the same decisions:

*Corporation of the City of London*, 2008 O.L.R.D. No. 5310, para. 1;

*Stock Transportation Ltd., supra*;

*SEIU Local 204 and CAW*, 2000 CanLII 12366 (ON LRB), 2000 CanLII 12366 at paras. 19-28;

*Fairfield Inn & Suites*, 2009 CanLII 33740 (ON LRB), 2009 CanLII 33740 at paras. 14-18;

> *Brant-Haldimand-Norfolk Catholic District School Board*, 2001 O.L.R.D. 1159;
>
> *Curtis and CEP*, [1993] OLRB Rep. 1260.
>
> 54. What the parties do not agree about is the application of these general principles in the Board's jurisprudence to these applications.

Like in *Wal-Mart*, the parties did not fundamentally disagree about the principles and largely referred to the same cases. They did, not surprisingly, disagree about the application of these general principles to the Union complaints.

45. Toronto Hydro's arguments here somewhat overlap with its arguments previously dealt with. However, in the mixture of factors that affect the exercise of the Board's discretion, they may have a different weight and impact both in the singular and in the aggregate.

46. There is no dispute that the allegedly improper surveillance occurred in 2008, more than a year and a half before the Union even began to inquire about it, and more than two years before the Union complaints were filed, and now approaching three years ago. There were absolutely no personal or individual consequences of the surveillance on Pessoa. The issue of the Health and Safety Representative was already a contentious and live issue between the parties before, and prior to the collective agreement negotiations. The collective agreement was resolved (in fact before its expiry date) and included a resolution of the differences that the parties were prepared to live with concerning the Occupational Health and Safety Representative (two years before the filing of the Union complaints). There are no allegations that the surveillance in any way impacted those negotiations (a difficult allegation to make since neither the Union nor Pessoa were aware of the surveillance at the time). In fact, Pessoa was not even a member of the Union bargaining committee (even if the Union regards Toronto Hydro's activities as an attempt to unearth information to attack Pessoa's character and integrity). The Collective Agreement was overwhelmingly ratified. There are no allegations of any present or continuing campaign to discredit or unjustifiably investigate Pessoa. Whatever the entitlement of the Union to some of the other unconventional relief it seeks, it does not seek to "undo" or "unwind" (as Toronto Hydro characterizes it) anything against Pessoa personally or anything with respect to the collective agreement which is now several years into its term.

47. Even a cursory review of the traditional factors listed in *Wal-Mart, supra* (and the many cases referred to therein) cast doubt on the labour relations purpose to be served in continuing this proceeding.

48. Although the Board is not prepared to dismiss this case solely on the basis of delay for all of the reasons discussed *supra*, the fact remains that the Union wishes the Board to inquire into the legitimacy of surveillance (which apparently had no actual impact) that took place three years ago.

49. For all of the reasons also outlined, *supra*, it is far from clear that any of the impugned conduct amounts to violations of those sections of the Act named in the Union's complaints (regardless of whether the Board might or might not characterize it as unwise or distasteful).

50. More importantly, the Board is troubled by the nature and utility of the relief the Union seeks. Without being repetitive, there is no sanction, discipline or penalty against Pessoa to overturn. If the conduct interfered with the Union or somehow undermined the obligation to bargain in good faith as the Union asserts, not only are there no allegations of specifically how, but there is no part of a long ago (overwhelmingly) ratified collective agreement that is sought to be changed. Rather, the Union seeks extraordinary relief in terms of large awards of damages to it and Pessoa (without in any way elaborating the basis of its calculations), a large contribution to charity to be made by Toronto Hydro in its name, apologies, and newspaper publications. Leaving aside whether the Board actually has jurisdiction to order such relief, such relief smells of how the Board described much less immoderate relief in *Universal Workers Union, Labourers International Union of North America, Local 183*, [2001] OLRB Rep. July/August 1103, at paragraph 10:

> "This relief appears to be little more than a request for a modern version of the eighteenth century of public flogging. Neither the hearing of this application nor the granting of such relief would serve any labour relations program."

51. Moreover, the Board is concerned about the costs not only to the parties but in terms of Board resources of allowing the proceeding to continue. Just the arguing of the parties' various preliminary motions consumed 4 hearing days (and that is not including an earlier full hearing day for opening statements and to establish the process for hearing the preliminary motions). If the case proceeds, the Union made clear that it would seek a sweeping Board production order to which Toronto Hydro does not appear willing to acquiesce. That is to say nothing of the number of days of *viva voce* evidence that would be required to hear the case. To put it mildly, this seems disproportionate to surveillance years ago that had no consequences on the individual in question and did not preclude the parties from reaching (and now living with for a year or two) a collective agreement that resolved, *inter alia*, the disputed position that the individual occupied.

52. So is there some statutory or labour relations purpose to be served by the litigation exercise? The Union passionately argues yes. It says that there is nowhere else for it to go and it is up to the Board to hold Toronto Hydro accountable (assuming, of course, that the Board would find that Toronto Hydro engaged in conduct that it needed to be held accountable for, i.e. the surveillance was not justified and that Lethbridge covered up or lied about it). The Union says that this has poisoned the labour relations between the parties, that these allegations and its complaint disclose "a boil that must be lanced" in order for labour relations at the workplace to be "purified" and restored to their proper balance. Ironically, most of what the Union points to as the "poisoned labour relations" of the workplace, comes not from its allegations, but the allegations in Toronto Hydro's complaints.

53. There is little doubt about the passion and outrage the Union feels about what it characterizes as Toronto Hydro's alleged misconduct. If the Union complaints and pleadings do not make that abundantly clear, the views expressed by the parties at the hearing remove any doubt. But the question the Board is left with is whether the processing of this complaint serves any labour relations purpose other than assuaging the Union's outrage.

54. It is trite to observe that the Union's outrage is insufficient to found a violation of the Act. Moreover, even accepting:

(a) the Union's characterization of a poisoned labour relations environment as correct, or;

(b) that it is attributable solely to this alleged misconduct by Toronto Hydro and not in any way the Union's blame as well (a proposition which is at least questionable if one only reviews the allegations in Toronto Hydro's parallel complaints)

is lengthy litigation over surveillance (maybe justified or not)

(c) almost 3 years ago that appears to have had no discernable impact on either the individual or the Union;

(d) when the underlying issue has been resolved in a collective agreement now midway through its term

serve the labour relations purpose of the statute? The Board does not think so. It is time for these parties to move on not litigate old wounds or grievances. The Board finds appropriate the words in *Victory Soya Mills*, [1989] OLRB Rep. June 653, where the Board declined to inquire into an unfair labour relations practice complaint similarly involving what those parties characterized as a matter of "high principle", at paragraph 25:

> We acknowledge the union's concern that an employer, by granting or withholding "indulgences" should not be permitted to undermine the independence of the employees' bargaining agent or control the identity of the employees' representative. A withdrawal, without business justification, of accommodations previously made, with the intention or obvious effect of penalizing the employees for their choice of bargaining representative, might well breach section 64. But that is not really what has happened here. What we have before us is a simple conflict of personalities and a contest over which party will ultimately turn out to be more stubborn and short-sighted. That is not the kind of situation in which the Board, in its discretion, should be involved. Assuming, *without finding* that the company's conduct might constitute a contravention of section 64 of the Act, we would not be disposed to grant any remedy. In the particular circumstances of this case, we are satisfied that the problems raised before us are best resolved through the process of discussion and collective bargaining between the parties, and not through intervention by this Board. The matters of "high principle" raised by the parties are better addressed in a case which really warrants their consideration. This is not such a case. (*emphasis added*)

Without in any way disputing whether the labour relations atmosphere is poisoned (or there is a "boil that must be lanced"), the Board is not persuaded that continuing this litigation is any solution. Accordingly, in all of these circumstances, the Board determines that there is no real labour relations purpose to be served by continuing to litigate the Union complaints and they are hereby dismissed.

## **Toronto Hydro Complaints**

55. Toronto Hydro, at the conclusion of the hearing, and in response to questioning from the Board, indicated that in the circumstances, were the Union complaints dismissed, the "labour

relations sense" dictated that its complaints be dismissed as well. Accordingly, the Toronto Hydro complaints are also hereby dismissed.

56. Since they are being dismissed, there is not much purpose in commenting on the Toronto Hydro complaints other than to make this observation. The Board does not wish to appear as it is castigating only the Union for the sad state of labour relations affairs these proceedings suggest at Toronto Hydro. But for Toronto Hydro's wise decision at the conclusion of the hearing, there was a significant possibility that Toronto Hydro's complaints (even more prolix and in some ways even more hyperbolic than the Union's) would have met the same fate as the Union's.

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**2880-10-U** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) on its own behalf and on behalf of its Local 6500 and its Local 6200, Applicant v. **Vale Inco Limited**, Responding Party

**Interference with Trade Union – Right of Access – Strike – Unfair Labour Practice – During a long and bitter strike nine employees were terminated and banned from Vale Inco's property – One of those terminated, Veinot, had been a union activist, although after running for President of the Local (from his position as Vice-President) and losing, he had no official position at the time of the strike – After the strike was over the President retired and Veinot was appointed Local Vice President, in accordance with the Steelworkers' constitution – Vale continued to ban Veinot from all company property and refused to recognize him in those capacities where it asserted the collective agreement required him to be an employee – The Steelworkers filed this application alleging a violation of s. 70 of the Act – Veinot was a satisfactory employee, with a discipline free, or virtually discipline free record; no criminal record and no record of violent outbursts or conduct – He was found not guilty of criminal harassment resulting from an incident that occurred during the strike, the same incident that gave rise to his termination and banning from the company property – Using either "actual interference" (see: *International Wallcoverings*) or balancing of interests (see: *Maritime Employers Association*) test, the Board found that Vale had breached the Act – First, alternative solutions were not offered by Vale; second, an arbitration proceeding was delayed as a result of the Union's advisor (Veniot) not being able to "take a view" of Vale's property; third, the ban deprived the President and others from the assistance of Veinot whenever the issue involved Vale property; and finally, the "cold and hard" message from Vale was not subtle, but undermined both Veinot and the Local – In assessing the balance of interests the Board noted that there was nothing before it that connected Veinot in any way to the incident – He was acquitted of the charges and Vale declined to explain the manner, method or content of its own investigations into the incident – The Board found it was not crebible on the evidence before it to conclude that Veinot presented such a "risk to the physical and mental well-being" of Vale Inco's employees – The Board found that between the legitimate company interests (protection of the physical and mental well-being of its employees) and reality, there must be more to "connect the dots" than a mere belief – That is, in balancing the competing interests, Vale Inco's mere belief does not outweigh the very real impact that**

**banning Veinot from Company property has on the administration and representation of the Union – Application allowed with posting and cease and desist direction**

**BEFORE**: *Bernard Fishbein*, Chair.

***APPEARANCES:*** *Brian Shell, Chris Donovan, Caroline Burbank, Rick Bertrand* and *Patrick Veinot* for the applicant; *Timothy P. Liznick, Mitch Medina* and *Kevin Inwood* for the responding party.

**DECISION OF THE BOARD:** December 22, 2011

1. How far can an employer go in banning a duly selected union representative from its property without interfering with the administration of the trade union or the representation of employees by a trade union, contrary to section 70 of the *Labour Relations Act, 1995,* R.S.O. 1995, c.1, as amended (the "Act")? That is the issue raised by this application under section 96 of the Act filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) on its own behalf and on behalf of its Local 6500 and its Local 6200 ("the Steelworkers" or "the Union") against Vale Inco Limited ("Vale Inco" or "the Company").

2. The basic facts are not in dispute. The Steelworkers commenced a lawful strike against Vale Inco on July 13, 2009. It was a long and bitter strike that ended only on July 8, 2010.

3. Patrick Veinot ("Veinot") was an employee of Vale Inco. For all intents and purposes, Veinot was a satisfactory employee. He had a discipline free, or virtually discipline-free record. He had no criminal record. He had no record of violent outbursts or conduct.

4. Veinot was also a union activist. He had been Chief Steward of Maintenance and Electrical from 2001 to 2006 and in that capacity, sat on the Grievance Committee. In 2006 he was elected Vice President of the Local and, as a result, was the Chair of the Grievance Committee. He then ran for President of the Local and was defeated in the election prior to the strike by John Fera, who became President. At the time of the strike, Veinot held no official position in the Local.

5. As noted above, it was a long and bitter strike. During the course of the strike, a number of employees exercised their lawful right to abandon the strike and return to work. Not surprisingly, that caused some consternation among those who were continuing on strike.

6. During the course of the strike, a number of Vale Inco employees were terminated and banned from Vale Inco's property. One of those employees was Veinot. The refusal of Vale Inco during bargaining to agree to arbitration (or any other process whereby those discharged employees would possibly be reinstated) forms the subject matter of another complaint by the Steelworkers against Vale Inco (OLRB File No. 3033-09-U). That complaint has been litigated before the Board for many days and at the time of the writing of this decision, has not yet concluded. I make no further comments about that proceeding (nor should I) other than its specific relationship to this complaint.

7. Veinot was discharged by Vale Inco on January 22, 2010, as a result of an incident that occurred on January 19, 2010, involving Todd Chretien ("Chretien"), an employee who had elected to return to work during the strike, Veinot and two other striking employees, Mike French ("French") and Jason Patterson ("Patterson"). Chretien was assaulted. French was criminally charged with assault and French, Patterson and Veinot were also charged with criminal harassment. Those charges came on for trial on January 31, 2011 (about 7 months after the strike had ended). At that time, French was convicted of assault but all of French, Patterson and Veinot were found not guilty of criminal harassment because, in the words of the trial judge, "there is insufficient evidence to link any or all of them with this allegation of criminal harassment".

8. Following the conclusion of the strike, Fera retired. In accordance with the Steelworkers' constitution, then Vice President Rick Bertrand ("Bertrand") became President of the Local. On August 2, 2010, the Local Executive Board, in accordance with the Steelworkers' constitution, appointed Veinot as the Local Vice President.

9. Vale Inco continues to ban Veinot from all Company property and refuses to recognize him in those capacities that Vale Inco asserts the collective agreement requires him to be an employee and, in particular, with respect to the general Grievance Committee. Hence, this application.

10. In addition to, or to elaborate upon these basic facts which are not at all in dispute, the parties initially felt that it would be necessary to hear a number of days of *viva voce* testimony. However, with the assistance of the Board, the parties were able to reach an agreed statement of facts (and are to be commended for doing so) as follows:

> ## FACTS
>
> THE 2009-2010 STRIKE
>
> 1. The Union engaged in a legal strike on July 13, 2009 ("the Strike").
>
> 2. On January 19, 2010, Mike French was involved in an incident involving Todd Chretien — an offence for which Mr. French was criminally convicted on January 31, 2011. At the time of the assault, Mr. French was accompanied by Patrick Veinot and Jason Patterson.
>
> 3. On January 19, 2010, representatives of the Company obtained a statement from Mr. Chretien regarding the aforesaid assault.
>
> 4. At the time of the assault, Mr. Chretien was, and previously had been an employee of Vale who had exercised his right under the Labour Relations Act (1995) to quit the strike and return to work.
>
> 5. Prior to the strike, Mr. Chretien was and is a member of Local 6500.

6. In December 2009, the Employer was informed that a photograph of Mr. Chretien which had been altered to place a sign bearing the word "SCAB" on his T-shirt, was posted upon the website maintained by Local 6500 under the heading "Know your scabs".

7. In December 2009, the Employer was informed that the tires on Mr. Chretien's vehicle were slashed and the vehicle was vandalized, including having the word "scab" painted on the vehicle.

8. In January, 2010, prior to January 19th, the Employer was informed that copies of the defaced photograph described in paragraph 6 above were placed about the community in the immediate vicinity of Mr. Chretien's residence.

9. On or about January 14, 2010, Mr. French and Mr. Brian Miller were confronted by security officers retained by Vale and employed by AFI International in the immediate vicinity of Mr. Chretien's residence.

10. At 3:15 pm on January 20th, 2010, Andre Lauzon, Manager Creighton Mine and Jennifer Bagley - Human Resources Business Partner, spoke to Mr. French by telephone and sought his version of the events of January 19th, 2010; Mr. French declined to discuss the matter with the Company representatives.

11. At 3:30 pm on January 20th, 2010, Mr. Lauzon and Ms. Bagley spoke to Jason Patterson by telephone and sought his version of the events of January 19th, 2010; Mr. Patterson refused repeated requests for his version of the events and repeated that he was "just standing there".

12. At 4:13 pm on January 20th, 2010, Dave Duncan, Manager Garson Mine and Ms. Bagley spoke to Mr. Veinot by telephone and sought his version of the events of January 19th, 2010; Mr. Veinot refused repeated requests for his version of the events.

13. Based on the information which the Company had as of January 22nd, 2010, it concluded that Mr. Chretien was physically assaulted by Mr. French who was verbally encouraged and supported by Messrs. Veinot and Patterson. The Company believed that Mr. Veinot had verbally assaulted Mr. Chretien by swearing at him and repeatedly calling him a "scab". The Company further believed that the confrontation with Mr. Chretien was intentional and premeditated on the part of Messrs. French, Veinot and Patterson and believed that the assault and confrontation was perpetrated because Mr. Chretien had returned to work crossing the Union's picket line.

14. On January 22, 2010, the Employer discharged Patrick Veinot based on its beliefs surrounding the events of January 19th, 2010

concerning Mr. Chretien. The Employer's January 22, 2010, termination letter is attached.

15. The Company's discharge letter to Mr. Veinot contained a prohibition against Mr. Veinot's attendance on any Company property.

16. The Union was aware in, and following January 2010, that Mr. Veinot was prohibited from attending on Company property.

17. Patrick Veinot was charged with criminal harassment with respect to the alleged incident referred to in paragraph 2.

18. The Strike ended on July 8, 2010.

PATRICK VEINOT

19. Patrick Veinot was Chief Steward of Maintenance and Electrical from 2001-2006. In that capacity he sat on the Grievance Committee.

20. In 2006, Patrick Veinot was elected USW Local 6500 Vice President and assumed the role of Chair of the Grievance Committee. He continued to perform all of the duties of predecessor Vice President Scott Duncan, including attending on Company property.

21. The 2006 Collective Agreement and the current Collective Agreement contain the following provision as article 3.03:

> there shall be no solicitation of membership in any Union organization or collection of union dues or any union activity on Company time or plant or mine property. This clause shall not prevent employees from engaging in casual conversations regarding union affairs.

*[There was some disagreement between the parties about how vigilantly Vale Inco had applied this article, particularly since the end of the strike. At the behest of the Board, the parties provided particulars of Vale Inco's attempts to control access to Company property by union officials other than Veinot, rather than hear extensive viva voce evidence about them. Both parties did so and ultimately agreed on virtually all of them. Those particulars have not been set forth here because not only are they lengthy but, although reviewed by the Board, they have not played any significant part in the conclusions reached in this decision. Suffice it to say that there have been instances where Vale Inco has altered the circumstances under which Union representatives have wished to visit Company property to which the union representatives have acceded, but the union representatives did attend on Company property to conduct their business – all without grievances. For obvious reasons*

*involving security and safety Vale Inco requires anyone (including employees not scheduled to work) to sign in and sign out at access gates with security personnel and the Union has never objected to this practice.]*

22. Throughout the performance of his duties as Chief Steward and as Vice President prior to the commencement of the Strike, and since reassuming his duties as Vice President on August 2, 2011, Patrick Veinot has never been disciplined by the Employer in any manner whatsoever, with the exception of a possible single incident relating to e-mail use. Patrick Veinot has no criminal record and the employer has not disciplined Veinot for inappropriate, violent or other unacceptable behavior of any kind, before or after the Strike. Patrick Veinot lives with his common law partner [omitted] and with their three sons [omitted].

## APPOINTMENT OF PATRICK VEINOT AS USW LOCAL 6500 VICE PRESIDENT

23. Following the end of the strike, on August 2, 2010, then Union President John Fera retired. Under the USW's International Constitution, then Vice President Rick Bertrand assumed the role of Local 6500 President.

24. On August 2, 2010, the Local 6500 Executive Board appointed Patrick Veinot as the USW Local 6500 Vice President.

25. At the time of Vice President Veinot's appointment, Mr. Veinot was a discharged striking employee whose employment status forms part of the Union's unfair labour practice complaint now pending before the Board (Board File No. 3033-09-U).

26. Following his appointment as Vice President, Patrick Veinot was interviewed by Heidi Ulrichsen, a reporter for Northern Life, a local Sudbury news publication, for an article published on August 4, 2010. Mr. Veinot was specifically asked about the restrictions imposed upon his ability to fulfill the office of Vice President because of his ban from Company property. Mr. Veinot was quoted as saying:

> he said the fact that he's currently unable to go on to Company property isn't a problem because "there's nothing in the collective bargaining agreement (CBA) that requires the Vice President or President (of the Union) to be on the (Company's) property.

The full article is attached.

27. The Union takes the position that the article is not relevant. The Union takes the position that the article omitted Mr. Veinot's comments to the effect that, if necessary and hopefully it would not

be necessary, these restrictions would be contested in the appropriate forum(s). Neither Mr. Veinot nor the Union sought to have the newspaper article changed.

## THE ACQUITTAL OF VEINOT'S CRIMINAL CHARGES

28. On January 31, 2011, Patrick Veinot was acquitted of the charge of criminal harassment, the only offence with which he was charged. The Court's oral judgment and transcript is attached.

29. The Company believes that Mr. Chretien was physically assaulted by Mr. French who was verbally encouraged and supported by Messrs. Veinot and Patterson. The Company believes that Mr. Veinot had verbally assaulted Mr. Chretien by swearing at him and repeatedly calling him a "scab". The Company further believes that the confrontation with Mr. Chretien was intentional and premeditated on the part of Messrs. French, Veinot and Patterson and believes that the assault and confrontation was perpetrated because Mr. Chretien had returned to work crossing the Union's picket line. Notwithstanding the acquittal, the Company has not changed its mind.

30. Because of the foregoing beliefs the Company continues to prohibit Mr. Veinot from attending on any of its property as the Company believes that his presence poses a risk to the physical and mental well-being of its employees in particular those bargaining unit and non-bargaining unit employees who worked during the strike and who had crossed the Union's picket line.

31. There remain in the Company's employ, at various sites, both bargaining unit and non-bargaining unit employees who had crossed the picket line during the strike to work.

32. The Company does not knowingly permit persons who it has terminated from employment to have access to Company property.

## THE POWERS OF THE USW LOCAL 6500 VICE PRESIDENT

33. The USW International Constitution is attached. Under Article VIII(2) of the USW International Constitution:

> The Vice President shall assist the president in the discharge of the President's duties and during the President's absence shall perform the duties of the president. In the event that a vacancy occurs in the office of the President, the Vice President shall act as a President for the unexpired term.

## THE USW LOCAL 6500 VICE PRESIDENT'S HISTORICAL DUTIES

34. Historically the USW Local 6500 Vice President served as the Chair of the Grievance Committee and as a member of the Joint Grievance Committee, with primary responsibility for the administration of the operation and enforcement of the Collective Agreement on behalf of the Local Union.

35. Article 7.09 of the collective bargaining agreement provides, in part: the General Grievance Committee and grievance stewards as designated by the local Union, shall be employees and shall consist of not more than one (1) for each thirty five (35) employees

36. The Company has refused to recognize Mr. Veinot as the Chair of the General Grievance Committee as he is not an employee. No grievance has been filed by the Union with respect to this matter.

37. Following the strike, the Company has engaged with Mr. Veinot with respect to outstanding and ongoing grievances by telephone, by e-mail and at meetings at the union hall, including one-on-one meeting: between Veinot and Kristeen Gaasbeek, one of the Company's Human Resources Business Partners. The Company and Veinot have scheduled grievances, agreed upon arbitrators, and negotiated resolutions of grievance matters.

38. The Union has never previously sought to appoint a terminated person or non-employee as Grievance Committee Chair.
39. Historically, the USW Local 6500 Vice President has attended on the Employer's property for scheduled Union-Management meetings and to meet with USW Local 6500 members as required.

40. The Union has never previously appointed a terminated person or non-employee as Vice President.

41. Under the Letter of Agreement titled 'Grievance Process' attached to the 2010 Collective Agreement, the USW Local 6500 Vice President sits on the Joint Grievance Committee.

## POST-STRIKE

42. Since the end of the Strike, the Employer has prohibited Vice President Veinot from attending on Company property.

43. The Union and the Employer have conducted, inter alia, the following meetings on Employer property from which Vice President Veinot was excluded because the Employer prohibited him from attending on Employer property:

i. August 10, 2010 (re: resolution of general issues relating to the operation of the CBA)
ii. August 11, 2010 (re: the pension plan)
iii. August 20, 2010 (re: RTW Agreement)
iv. August 27, 2010 (re: 'workforce balancing')
v. September 8, 2010 (re: 'direct difference' grievance)
vi. September 15, 2010 (re: lay-offs, operations vacancies and the correction of lay-off mistakes)
vii. October 5, 2010 (re: Return to Work Bonus, warehousing issues and the number of operations positions)
viii. October 21, 2010 (re: pension plan and benefit carrier)
ix. November 16, 2010 (re: outstanding grievances, including the C. McLeod grievance filed by Veinot)

44. With respect to the meetings identified in paragraph 43 above, the Union has never asked to have Mr. Veinot participate in such meetings by teleconference or video-conference with his fellow union colleagues in attendance on Company property. The Company has facilities for teleconferencing and videoconferencing which would allow Mr. Veinot's virtual presence at meetings and is and has been prepared to make these facilities available. The Company has never made this suggestion known to the Union.

45. Following the strike, the Company has met with Mr. Veinot off of the Company's premises, including at the Union Hall with respect to some matters.

46. Following the strike, continuing to present, various Company officials deal with Mr. Veinot by telephone, email, text message and in person off Company property at times on a daily basis, dealing with matters related to the administration of the collective bargaining agreement.

47. With respect to the exclusion of the USW Local 6500 Vice President, the Union President Rick Bertrand wrote to Employer HR Manager Mitch Medina on October 8, 2010. Mr. Bertrand's October 8, 2010, letter is attached.

*[It essentially asserts the Union's position that Veinot's attendance was "critical" at Union Management meetings or, alternatively, to hold those meetings at the Union Hall.]*

48. Employer HR Manager Mitch Medina responded to Mr. Bertrand on October 18, 2010. Mr. Medina's October 18, 2010 letter is attached.

*[It essentially reiterates the Company's position – asserts that the meetings will be of value even in Veinot's absence but refuses to hold meetings per se at the Union Hall as access to various members of*

> *management may be needed and that Vale Inco was unwilling to "incur further inconvenience and/or expense to accommodate Mr. Veinot".]*

In fact, the issue even flared up on the eve of this hearing when Veinot requested to attend a community meeting being held at the Copper Cliff Club (apparently Vale Inco property) and Vale Inco sought to impose conditions on Veinot's attendance before it would consent. E-mails about that incident were filed by the parties about the events.

11. As a result, it was not necessary for the Board to hear any *viva voce* evidence, but only the legal submissions of the parties.

**The positions of the parties**

**(a) The Union**

12. The Union refers me primarily to the Board's decision in *McDonnell Douglas Canada Ltd.*, [1988] OLRB Rep. May 498 and the cases cited therein. The Union argues that section 70 must be read in conjunction with section 5 of the Act that not only guarantees the person the right to join a trade union but to participate in its lawful activities and these are the rights that are protected from interference by section 70 of the Act. Borrowing from the words of *Maritime Employers' Association Montreal, Quebec*, [1985] 12 CLRBR (NS) 18 and the words of the Canada Board (quoted at paragraph 9 of *McDonnell Douglas)*:

> In a more recent case, *Canadian Pacific Air Lines Ltd.* (1985), as yet unreported Board decision No. 520 [since reported 10 CLRBR (NS) 621], the Board had this to say about s. 184(1)(a) at p. 77:
>
> > The provision is also directed at leaving the union free to operate and to do its job on behalf of the persons it represents without improper meddling by the employer in matters that are primarily the concern of the union, meddling that would have the effect of undercutting or weakening the union.
>
> *Thus, it has long been recognized that the choice of union officers and representatives is a crucial matter that does not fall within the province of the employer and in which he cannot participate or interfere.*
>
> (emphasis in the original)

13. The Union says that any position of Vale Inco based on a collective agreement requirement that Veinot must be an employee is an incorrect interpretation of the collective agreement. It points to the Letter of Understanding dealing with the grievance process at the Joint Grievance Committee (whose purpose appears to be not individual grievances but the logistics of all grievances) which specifically includes the Vice President of the Union and mandates meetings to be scheduled "in plant locations where appropriate". To the extent that Article 7.09 dealing with the "General Grievance Committee" speaks of employees, it does not specifically address the Vice President who has always been a member. At best the provision is ambiguous. Article 3.03, which appears to prohibit "any union activity on Company time or plant or mine property", the Union argues has never been seriously enforced.

14. In any event, the Union again refers me to *McDonnell Douglas* where a discharged employee was elected union president and the employer sought to ban him from its premises on the basis that the collective agreement required the union president to be an employee:

> 16. We do not accept the argument that the clauses cited make it clear the parties agreed that only an employee could hold the office of President. Certainly they contemplate that the President may be an employee; however, we find no indication that the President is required to be an employee. … Nevertheless, taking the respondent's case at its highest and assuming, without finding, that an ambiguity is raised in this regard, we do not find that the evidence adduced either resolves that ambiguity or raises an estoppel. It is not surprising that the five previous Presidents of the complainant have been employees, given that the complainant is a single plant local at the present time. This does not in our view, amount to a representation or an implied understanding that the President must be an employee. The parties agreed that the issue was never discussed in negotiations and the other evidence is simply inconclusive. While the complainant has appointed alternates for some employees holding other union offices who lost their employee status, it has never done so for the office of President…
>
> 17. It may well be that the respondent assumed that the local President would be one of its employees. However, this seems a tenuous assumption, given the qualifications for standing for this office in the complainant's constitution and the local structure, both of which the respondent acknowledged it was aware. In addition, such an assumption was, at best, a unilateral one. In our view, the parties simply did not turn their minds to this issue in any mutual fashion, and the evidence adduced falls short of either resolving any ambiguity in the collective agreement or establishing an estoppel. We conclude that there was no agreement in this regard, either in the collective agreement or otherwise. As a result, it is unnecessary for us to address the complainant's argument that such an agreement would be impermissible under the Act.
>
> 18. There can be little doubt that the respondent's conduct amounts to a significant interference in the administration of the complainant. Aside from the fact that the latter's duly elected President has been prevented from or impeded in the carrying out of his duties, we also accept that such conduct may have more subtle ramifications, including undermining both the complainant and this particular President in the eyes of employees and having an impact on subsequent elections. Indeed, it is unnecessary to belabour this point as the respondent did not suggest otherwise.

15. The Union refers me to *International Wallcoverings*, [1983] OLRB Rep Aug. 1316 and the cases discussed therein for the analysis of the degree to which intention is required for a violation of what is now section 70 of the Act (see discussion at paragraphs 20-34). Whether I adopt:

(a) a motive-based approach in which case extensive evidence of intent is unnecessary where employer conduct so inherently violates protected activity under the Act as an application of the common law rule that a person is held to intend the foreseeable consequences of his or her conduct (therefore the Board will not accept evidence of *bona fide* business purposes as a complete answer to the adverse impact on a trade union by the acts complained of), or

(b) whether I accept a more impact-based analysis that the essential element in a section 70 complaint is the employer interference – but a distinction should be drawn between actual interference with the trade union and employer conduct that only incidentally affects the trade union,

the Union asserts there has been significant and substantial interference here by the Company's conduct.

16. In any event, the Union argues that Vale Inco cannot really point to any justifiable business reasons for banning Veinot from its property. Veinot was charged but was acquitted of any criminal offence, he has no prior significant discipline record or record of any kind of violent activity and to assert a safety concern because he will have to now work among other employees who crossed the Union picket lines during the strike is simply not credible because there are thousands of returning employees in similar circumstances and no basis to single out Veinot.

17. The Union, although not explicitly referring to them in its argument, also referred to *Hydro One Inc.*, [2005] CanLII 41841 (ON LRB); *Skyline Hotels Limited*, [1980] OLRB Rep. Dec. 1811; *Maple Leaf Monarch,* [1984] OLRB Rep. March 505; *Ontario (Management Board of Cabinet*), 2002 OLRD No. 1094; *Victory Soya Mills,* [1989] OLRB Rep. June 653; *Canada Post Corporation*, [1989] 79 di 122; and *CFTO-TV Limited*, [1995] 97 di 35.

### (b) Vale Inco

18. Not surprisingly, Vale Inco sees the issue differently. It says this is not just about Veinot *per se*. Rather, like many others who crossed the picket line, Chretien was subjected to vicious personal attacks which the Union either was aware of or participated in, and which, in Chretien's case, ultimately culminated in an assault on him. Whether Veinot was the one who physically assaulted Chretien or not, Vale Inco's investigation of the incident has led it to the conclusion the confrontation was premeditated and Veinot participated in the confrontation. Not only does Ontario law require Vale Inco to operate a workplace free of violence and harassment, but it has the legitimate concern about how employees who lawfully chose to return to work will be treated in the workplace.

19. Moreover, Vale Inco argues when Veinot was discharged and prohibited from attending on Company property, he was not even a Union official. When he was selected to be a Union official, Veinot was already a discharged employee who had been banned from Company property and the Union was fully aware of that. In Vale Inco's submissions, to the extent that they are required to recognize Veinot as the Union Vice President, Vale Inco has dealt with him, but that is separate and apart from whether they are compelled to allow him access to Company property. However small, in Vale Inco's submission, the risk that Veinot would be violent on Company property, is a risk they are simply not required to take.

20. Vale Inco refers me to the Board's decision in *Maple Leaf Monarch Company*, [1984] OLRB Rep. March 505, where the Board refused to find a violation of what was then section 64

of the Act when the employer banned a person elected as the union president from company property after a violent altercation, and paragraph 16 of that decision:

> The most troublesome aspect of this case is Winston Scotland's initial refusal to recognize Renaud's status as union president during his suspension. Indeed, we are not entirely satisfied that the employer's stance ever really changed, as the November 1st meeting proposed by Scotland coincided with Renaud's return to work. However, in the peculiar circumstances of this case, we conclude that the employer's refusal to deal with Renaud as union president did not amount to interference in the administration of a trade union contrary to section 64 [now section 70]. Given that Renaud was under suspension because he was believed to have violently attacked another employee, management had a legitimate interest in barring him from the plant to prevent a reoccurrence. In addition, on the evidence before us, the only matter Scotland expressly refused to discuss with Renaud was his own grievance. We do not view this as an attack upon the union, as grievors are often excluded from labour-management meetings in order to facilitate the settlement process.

Ironically, Vale Inco also refers us to the decision of the Canada Labour Relations Board in *Maritime Employers' Association*, *supra*, where an employers' association continued to bar the union president from its premises (even after he had been reinstated to employment) as a result of a violent incident in the offices of the employers' association. After extensively reviewing the jurisprudence (including some Ontario jurisprudence), the Board concluded:

> 55. However, the Board concludes from the foregoing that although the administration of a union and the selection of its representatives and officials are matters beyond the employer's control, the carrying on of union activities or official duties in such organizations cannot give carte blanche to those who take it upon themselves to do anything whatever at any time. […]
>
> …
>
> 79. As for the employer, no one will deny that the MEA had a legitimate interest in protecting the physical integrity of its representatives and employees. An employer must surely expect a union and its representatives to pursue the interests of their members aggressively, but not in a manner that is not only totally unacceptable in our society but also incompatible with the Code, by resorting to direct attacks on the physical integrity of individuals.
>
> 80. The union and those it represents have the essential right to be completely free to designate those who will act on their behalf. The measures which the MEA took forced the union to reorganize its affairs. Thus, others had to deal with the employer since Mr. Beaudin, who had been rendered ineffectual and unable to act, could no longer effectively carry out the duties that had been conferred on him.
>
> 81. It is between these two interests that we must strike a balance. In the circumstances of the instant case, and after due consideration, the Board is of the opinion that the MEA's refusal to meet with Mr. Beaudin and the denial of access to the MEA's premises and facilities were measures to which the MEA was legitimately entitled, given Mr. Beaudin's behaviour, and that, in

> the instant case, these measures therefore did not constitute prohibited interference under section 184(1)(a).
>
> 82. As we said earlier, Mr. Beaudin's behaviour was unacceptable, and the Board cannot sanction it, regardless of the sympathy that Mr. Beaudin might inspire. Moreover the evidence revealed that, in the past, Mr. Beaudin had resorted to violence, uttered threats and made abusive remarks to others in the performance of his union duties. The MEA therefore had legitimate grounds for believing that Mr. Beaudin would do so again.

21. Vale Inco concedes that *Maritime Employers' Association, supra,* and the jurisprudence referred to therein can support a finding of interference with union representation even in the absence of anti-union animus. But Vale Inco asserts that the mere banning of the union representative from the employer property is not interference *per se*. In the submission of Vale Inco, there needs to be something more and the union has failed to establish any serious consequences. In Vale Inco's submission, it was within its rights and the law to ban Veinot from Company premises.

22. Moreover, the Company argues that it is open to parties in a collective agreement to either limit or dictate conditions on union representation. Vale Inco says that the parties have done so in Article 7.09 of the collective agreement that requires the Vice President to be an employee. It points us to the arbitration result in *Re Zellers Inc. and U.F.C.W., Local 175*, [1995] O.L.A.A. No. 1113 (Hinnegan), where an employer's refusal to recognize a discharged employee as part of the negotiating committee was upheld because the negotiating committee was to be composed of a representative of the union and "not more than three employees":

> 9. A discharged employee is given the right to grieve that discharge but, pending the outcome of the grievance and arbitration procedure, she is clearly not covered by the provisions of the collective agreement. Otherwise, there would be no need to "reinstate" a grievor to her employment status and order retroactively any benefit provided in the agreement as being appropriate in the circumstances. Accordingly, unless and until the grievor's discharge is reversed by an arbitrator and she is reinstated to her employment status, she is not covered by the provisions of the collective agreement from the date of the discharge and is not an "employee" as defined by the parties.
>
> 10. In the result, not being an employee, she cannot be an employee member of the negotiating committee and, further, she had no status to file the individual employee grievance with respect to this matter.

23. Also, the Company points me to the decision in *Canada Safeway Ltd.*, [2002] OLRB Rep. November/December 996 for the proposition that individuals who may still have a contingent interest in their employment are still not employees.

24. In summary, the Company asserts that it had no improper motive or anti-union animus (which it says is clearly agreed to in paragraphs 29 and 30 of the Agreed Statement of Facts - Veinot is banned from Company premises as a result of the Company's investigation and conclusion that he participated in the altercation (not the assault) with Chretien and therefore poses a risk to the "physical and mental well-being of its employees and particularly those bargaining unit/non-bargaining unit employees who worked during the strike and who have crossed the union's picket line"). Given that there can be no suggestion of anti-union animus in

the Company's actions, it is a simple balancing of interests question. The Company says that the balance should be resolved in favour of it for a number of reasons:

> (a) it is the Union who caused the problem because at the point that Veinot was fired and banned from Company property he was not a union official - and it was the Union that selected him as a representative in conflict with the already imposed restrictions;
>
> (b) the obligations of the employer to provide a safe workplace to all its employees, including those who crossed the picket line;
>
> (c) Veinot was treated the same as any other employee discharged during the course of a strike;
>
> (d) these circumstances have never existed before and there are other means for the Union and Veinot to participate that are less intrusive to Vale Inco's fundamental property rights (whether it be participating in meetings by video or telephone conference) which the union never explored;
>
> (e) the parties in their collective agreement have agreed that the Grievance Committee must be composed of employees and there is no reason for the *Labour Relations Act* to supersede the parties' collective agreement arrangements which they were entitled to make.

25. Vale Inco, although not explicitly referring to them in its argument, also referred me to *Victory Soya Mills*, [1989] OLRB Rep. 653; *Caravan Trailer Rental Co. Limited*, [1990] OLRB Rep. June 647; *Thomas Product Co. Ltd.*, [1980] OLRB Rep. July 1095; and *Ramada 400/401*, [1983] OLRB Rep. July 1192.

## Analysis and decision

### (a) What has not mattered here - What has not influenced the decision

#### (i) The Collective Agreement

26. In oral argument Vale Inco did not pursue that the prohibition of "union activity on Company time or plant or mine property" in Article 3.03 of the Collective Agreement justified Veinot's banning from Company property. Nor could it. The Agreed Statement of Facts makes it clear that Article 3.03 has never been applied to the Union Vice President in such a manner (see paragraph 39). Nor was it ever advanced in the letter of October 18, 2010 from the Company's Manager of Human Resources setting out the Company's position (referred to in paragraph 48 of the Agreed Statement of Facts).

27. However, Vale Inco has strongly asserted that its failure to recognize Veinot as a Chair of the Grievance Committee is contemplated, if not required, by the collective agreement and in particular Article 7.09:

> The General Grievance Committee and grievance stewards, as designated by the Local Union, shall be employees and shall consist of not more than one per each 35 employees.

Even assuming that the arbitral jurisprudence (*Zellers Inc., supra*) cited to me by Vale Inco is correct, and even assuming that the provisions of the Act (i.e. Section 70) do not "trump" the Collective Agreement provisions (i.e. the parties are not free to contract out of the Act), as urged upon me by the Union, it is far from clear to me that this result is dictated by the collective agreement.

28. First, Article 7.09 does not explicitly refer to the Chair of the Grievance Committee. Moreover, as the Union notes, Article 7.11 and 7.12, which also address the General Grievance Committee and its composition and the **Union's right to designate** stewards, chief steward **and the Chair of the General Grievance Committee** does not speak of the employee requirement. It may simply be that the language in Article 7.09 and the other articles is intended to address the grievance stewards who sit on the Grievance Committee and are intended to be employees. It is not obvious why (as opposed to an arguable case for stewards) the Chairman of the Grievance Committee (designated by the Union) must be an employee.

29. I am further strengthened in this view by the separate Letter of Understanding which addresses the Joint Grievance Committee, a separate and distinct committee from the General Grievance Committee. The Joint Grievance Committee appears to exist to talk about the logistics of all grievances and

> "...meet once every 3 months, if necessary, to establish appropriate measures and definitions for the determination of backlogs and share information which promote the effective hearing of the grievances. Meetings will be scheduled in client locations where appropriate, to discuss grievance backlogs and ways to resolve the grievance process issues."

30. Paragraph 1 of that Letter of Understanding specifically and explicitly puts the Vice President of the local union on the Joint Grievance Committee without any obligation anywhere in that Letter of understanding that he be an employee of the Company. It is not clear to me what purpose is served by interpreting the collective agreement (let alone finding that the parties specifically intended that result) as imposing a requirement that the chair of the General Grievance Committee be an employee when no such obligation is imposed on the Joint Grievance Committee, which explicitly provides for the union Vice President to be a member.

31. More importantly, it is incontrovertible that a situation where the Union Vice President is not an employee has never arisen before. It was not suggested nor argued that being an employee of Vale Inco was a Steelworkers' constitutional requirement for the Vice President or Chair of the Grievance Committee. In the circumstances of this case, it is difficult for me to conclude that the parties even contemplated, let alone intended, this result in Article 7.09.

32. Rather, this strikes me as more akin to the situation the Board found in *McDonnell Douglas Canada Ltd., supra*, at paragraph 17 that:

> "...the parties simply did not turn their minds to this issue in any mutual fashion, and the evidence adduced falls short of either resolving any ambiguity in the collective agreement or establishing an estoppel. We

> conclude that there was no agreement in this regard, either in the collective agreement or otherwise."

33. Counsel for Vale Inco sought to distinguish *McDonnell Douglas Canada Ltd., supra*, by submitting that in that case it was not clear that the union president had to be an employee as it is clear in this collective agreement that the General Grievance Committee Chair had to be an employee. For all of the foregoing reasons I do not think so.

34. In any event and most importantly, regardless of the interpretation of the Collective Agreement, it is clear that the Company has dealt with Veinot with respect to grievances (see paragraphs 37 and 45 of the Agreed Statement of Facts) if not on Vale Inco property. What Vale Inco objects to and is precluding is allowing Veinot on Company premises for this purpose. As a result, even were I disposed to interpret the collective agreement as the Company says, that is not really the issue between the parties. The Company is prepared to deal with Veinot with respect to grievances, it is just not prepared to allow him to do so on Company property. That is really the issue separating the parties – not the interpretation of the Collective Agreement.

35. It is also worthy of note that Vale Inco also suggested (not particularly forcefully) that the interpretation of the Collective Agreement was really an arbitral question and ought to be deferred to arbitration. See *Valdi Inc.*, [1980] OLRB Rep. Aug. 1254, *Lloyd Truax Ltd. Wingham*, [1986] OLRB Rep. July 994 and *Toronto District School Board*, [2002] OLRB Rep. September/October 956. Obviously to the extent I have expressed opinions on the interpretation of the Collective Agreement, I have not deferred to arbitration – that is because in the words of *Valdi Inc., supra*, (at paragraph 7) this complaint is not "essentially contractual". The only aspect of the complaint that relates to the Collective Agreement is the refusal to recognize Veinot as Chair of the Grievance Committee – the real crux of this dispute is the bar of Veinot from Company property which relates to statutory rights and in particular section 70. Moreover, in the words of *Valdi Inc., supra*, and *Toronto District School Board, supra* (at paragraph 11), "would the relief available in the arbitration process be adequate to remedy the alleged conduct of the employer?" It is difficult to see how any grievance about the proper interpretation of Article 7.09 of the Collective Agreement would address Vale Inco's ban on Veinot from all Company property.

### (ii) Fault – The Blame Game

36. Vale Inco argues that it is the Union that has caused this problem. When Veinot was discharged and banned from Company premises, he was not the union Vice President, and in fact, held no union position whatsoever. Vale Inco asserts that the Union therefore deliberately provoked this situation by selecting Veinot to be Vice President when he was already discharged and already banned, which it was fully aware of.

37. With all due respect, this argument is a little too disingenuous. As noted, Veinot is not a surprising selection for Vice President. He had been a union activist. He had been chief steward in maintenance and electrical and had been Vice President of the local and Chair of the Grievance Committee immediately prior to the most recent election. In fact, he was the defeated candidate for president. This is not a situation where the union has selected all discharged and banned employees for union positions, or simply provocatively picked one, as Vale Inco intimates.

38. More importantly, as the Union argued in reply, in the other complaint by the Steelworkers against Vale Inco (Board File No. 3033-09-U), the specific relief sought for all of the employees discharged and banned during the strike (including Veinot) was resort to some sort of arbitration where their discharge could be contested and reinstatement a possible resolution. That proceeding was not only commenced in the Spring of 2010, but actually held hearings well before the conclusion of the strike and the selection of Veinot as Vice President. In other words, there was outstanding litigation with respect to all of the employees discharged during the strike, including Veinot. That was equally known to Vale Inco before and at the time that Veinot was selected as union Vice President and Vale Inco still chose to continue its position with respect to prohibiting him from and enforcing the ban on his attendance at Company property.

39. Put simply, in determining whether this constitutes unlawful interference in the trade union contrary to the Act, I do not find "who poked who in the eye first" particularly helpful or persuasive in any analysis of the problem.

### (b) What does matter here

40. The Union's complaint alleges only a violation of section 70 of the Act, which provides:

> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

41. As noted in the submissions of the parties, the jurisprudence raises the question whether the wording of the section requires any motive or anti-union animus by the employer at all if there is interference with the administration of a trade union or the representation of employees by a trade union. Vale Inco argues because of its belief as agreed in paragraphs 29 and 30 of the Agreed Statement of Facts, "motive is off the table". In these circumstances and given the clearly foreseeable consequences of Vale Inco's conduct (to say nothing of the fact that the extent of Vale Inco's ban went so far as to impose conditions on Veinot's attendance at a public information meeting on the eve of the hearing that happened to be on Vale Inco property), I am not so sure. However, I need not decide that question because both Vale Inco and the Union argue that I can decide the case either on the basis of "actual" interference (as the Union submits based on *International Wallcoverings*) or on a balancing of interests (as Vale Inco argues based on *Maritime Employers Association*).

42. The Company argues that there has been no "actual interference" because the Union has not alleged any – no specific grievances that were unable to be handled and no specific issues that the parties were unable to resolve. I do not think it is that simple.

43. First, as the Union points out, the Agreed Statement of Facts in paragraph 43 lists a whole series of meetings only in 2010 which Veinot was prohibited from attending because they were on Company property. Moreover, even as Vale Inco notes, Company property is very large,

including multiple sites. Vale Inco argues that there were alternative arrangements available (such as video conferencing) which the Union never even requested. Leaving aside whether Vale Inco can advance sufficient justification for such elaborate complexity just for meeting, the simple fact is that having imposed the ban, Vale Inco never offered it as a solution either.

44. Secondly, I was provided with a copy of a preliminary arbitration award dated May 12, 2011 between the parties concerning the discharge grievance of Randy Taylor. Suffice it to say that for the purposes of adjudicating that grievance, the parties agreed that it would be "helpful and appropriate to have a view of the Employer's property" but then became embroiled in a dispute whether Veinot (the Chair of the Grievance Committee and the Union's advisor at the hearing) would be allowed to attend such a view and under what conditions. Although, as counsel for Vale Inco pointed out, the issue was ultimately resolved, at a minimum it still required an additional arbitration hearing and written submissions – hardly, in my view, "minor interference", as characterized by Vale Inco.

45. Third, as the Union argues, the impact of Vale Inco's ban falls not just on Veinot, but also on the president and other representatives of the Union, by depriving them of Veinot's ability to assist them and the President whenever it involved Company property (let alone the possibility of Veinot as Vice President having to replace the President), as well as members who no longer could easily access the Vice President while at work as had occurred in the past.

46. Fourth, I return to the words of the Board in *McDonnell Douglas Canada Ltd., supra*, at paragraph 18:

> 18. There can be little doubt that the respondent's conduct amounts to a significant interference in the administration of the complainant. Aside from the fact that the latter's duly elected President has been prevented from or impeded in the carrying out of his duties, **we also accept that such conduct may have more subtle ramifications, including undermining both the complainant and this particular President in the eyes of employees and having an impact on subsequent elections.** Indeed, it is unnecessary to belabour this point as the respondent did not suggest otherwise.
>
> **[emphasis added]**

47. Here, in my view, the ramifications are not subtle at all. There has been a long and bitter strike. The Union has selected a long-time union activist and the immediately preceding Vice President (and Chair of the Grievance Committee) (albeit one earlier discharged during the strike and banned from Company property) to replace the recently promoted Vice President in accordance with the Union constitution. This case is not about the merits of that discharge – no one is asking that Veinot be returned to the employ of Vale Inco in these proceedings. Rather, contrary to how previous Union Vice Presidents have been treated and allowed to perform their duties before, Vale Inco has insisted that this Union Vice President will not be allowed on its property. I think the message Vale Inco has sought to communicate is cold and hard (regardless of its precise motivations) and I conclude that there has been substantial interference both in the administration of the Union and its representation of employees (or in the words of the Canada Labour Relations Board that have "the effect of undercutting or weakening the union").

48. However, if I am wrong in this conclusion, adopting the balance of interests tests urged upon me by Vale Inco, then I am still hard pressed to see how any balance favours Vale Inco. At paragraph 13 of the Agreed Statement of Facts, Vale Inco says:

> 13. Based on the information which the Company had as of January 22nd, 2010, it concluded that Mr. Chretien was physically assaulted by Mr. French who was verbally encouraged and supported by Messrs. Veinot and Patterson. The Company believed that Mr. Veinot had verbally assaulted Mr. Chretien by swearing at him and repeatedly calling him a "scab". The Company further believed that the confrontation with Mr. Chretien was intentional and premeditated on the part of Messrs. French, Veinot and Patterson and believed that the assault and confrontation was perpetrated because Mr. Chretien had returned to work crossing the Union's picket line.

Further, paragraph 30 of the Agreed Statement of Facts reads:

> 30. Because of the foregoing beliefs the Company continues to prohibit Mr. Veinot from attending on any of its property as the Company believes that his presence poses a risk to the physical and mental well-being of its employees in particular those bargaining unit and non-bargaining unit employees who worked during the strike and who had crossed the Union's picket line.

49. What am I to make of this? Regardless of whether the Company belief is sincerely held or otherwise, that belief alone does not make it so. When called upon to explain the manner, method or content of its investigations, Vale Inco declined and objected that it was not before the Board (nor was it the Board's function) to justify its discharge of Veinot on any just cause basis. In Vale Inco's words, they were not before the Board to litigate Veinot's culpability. That may be so, but if I am balancing interests, how can I give weight to the employer's alleged interest when it flies in the face of uncontradicted evidence? However reprehensible the conduct against Chretien outlined in paragraphs 6 to 9 of the Agreed Statement of Facts (and whether the Union was aware of or condoned it), there is nothing before me that connects it to Veinot in any way. He was not even an officer of the Union at the time. Veinot was acquitted of any criminal conduct – not just assault, for which he was not even charged, but also criminal harassment. Veinot has no significant discipline record and certainly no record of prior violent conduct. Veinot would be only one of the thousands of employees who are returning to work after a long and bitter strike - many of whom no doubt do not think highly of those who crossed the picket line during the strike. Vale Inco and its representatives have met and are prepared to meet with Veinot off Company property – even one-on-one and at the Union Hall (see paragraphs 37 and 45 of the Agreed Statement of Facts). If the Company was "duly concerned about a repetition of [Veinot's] inappropriate behaviour [and even assuming there actually was any inappropriate behaviour] the venue of its meetings with him should not matter very much" (see *Victory Soya Mills, supra*, at paragraph 18).

50. It is simply not credible on the evidence before me (particularly when Vale Inco deliberately chose not to elaborate on the method or content of its investigation of the Chretien incident) to conclude that Veinot presents such "a risk to the physical and mental well-being" of Vale Inco's employees (and particularly those who crossed the picket line).

51. This is not to say that the protection of the physical and mental well-being of its employees is not a legitimate Company interest (in fact a priority), particularly in the tense and emotional situation of people returning to work after a long and bitter strike when some employees crossed the picket line. But between that legitimate Company interest and reality, there must be more to "connect the dots" than mere belief (which may or may not be reasonable in the circumstances). Or, put another way, in balancing the competing interests, Vale Inco's mere belief does not outweigh the very real impact that banning Veinot from Company property has on the administration and representation of the Union – all protected by section 70 of the Act.

52. Again, in no way to diminish legitimate concerns about the safety of employees and a violence or harassment free workplace, but this case is far different from the facts in both *Maritime Employers' Association, supra*, and *Maple Leaf Monarch Company, supra*, where the ban of union representatives was not found to violate the statutory prohibition on interference. There is no undisputed act of physical violence or history of such as in *Maritime Employers' Association, supra*, (leaving aside the ban there was from the Employer Association office not from a broad and expansive employer site like here). This is not just a three week suspension, there is not extensive and detailed evidence of the Employer's investigation and grounds for its belief, and the main, if not only, meeting that the Union representative was prevented from attending was that related to his own grievance like in *Maple Leaf Monarch Company, supra* (see paragraphs 5 to 12 and 16, quoted above).

53. Quite simply, there is no doubt that the Union is legally free to engage a complete stranger to Vale Inco to be its representative (or negotiator for that matter) and that is ordinarily beyond Vale Inco's ability to dictate or control and it must ordinarily accept that person. What if the Union hired someone who had a previous conviction for theft? For assault? The Company's simple belief (and nothing more) that such a person might pose a threat to employees would not be sufficient to justify a ban from its property. The Company's position is not enhanced merely because Veinot is a former employee who has been banned.

54. As a result, this application is granted. Vale Inco's refusal to allow Veinot on Company property in his capacity as Union Vice President is declared to violate section 70 of the Act, and Vale Inco is directed to cease and desist from such conduct. That is not to suggest that Veinot is entitled to roam Company property however and whenever he sees fit. For many reasons (safety, security, non-interference with Company business or production) reasonable limitations may be necessary. I will remain seized in the event that there are disputes between the parties with respect to the implementation of this decision – but quite bluntly I see no reason why there should be, or why the parties, acting reasonably, would be unable to resolve them among themselves. Notwithstanding the other requests of the Union, it is sufficient that this decision be posted in the workplace, together with the Notice attached as Appendix "A", so that it comes to the attention of affected employees, and the Board so orders.

## Appendix "A"

# The Labour Relations Act, 1995

## NOTICE TO EMPLOYEES

## Posted by order of the Ontario Labour Relations Board

This Notice has been posted in compliance with an Order of the Ontario Labour Relations Board issued after a hearing. The Board has determined that Vale Inco Inc. ("Vale Inco") has violated the *Labour Relations Act, 1995.*

The Board has found that Vale Inco has violated Section 70 of the Act by interfering in the administration of a trade union and the representation of employees by a trade union, namely, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) on its own behalf and on behalf of its Local 6500 and its Local 6200. Specifically, it did so by refusing to allow Vice President Patrick Veinot on Vale Inco property in his capacity as Union Vice President and has been ordered by the Board to cease and desist from doing so.

**This is an official notice of the Board and must not be removed or defaced.**
**THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS.**
**DATED this 22nd day of December, 2011.**

**0930-10-R; 0938-10-U** United Brotherhood of Carpenters and Joiners of America, Local 1946, Applicant v. **VanderWal Homes & Commercial Group**, Responding Party

**Certification Where Act Contravened – Construction Industry – Intimidation and Coercion – Remedy – The Board found that the employer was influenced by his knowledge of union activity among his crew when he failed to return them to work following a work stoppage beyond their control – When he spoke to employees individually, the employer sought to confirm that the employees had been in touch with the union, and asserted to the employees that they had quit their jobs and signed with the union – On the issue of remedy, the Board looked at allegations of employer support for the union, and options available to the Board in light of the union's inability to demonstrate an appearance of minimum employee support to warrant the holding of a vote – The Board found that the senior employee who contacted the union did so after he had severed his relationship with the employer; that is, he was acting on his own initiative against the employer's interests (and in support of the employees' interest) – The Board observed that since the union was unable to demonstrate 40% support on the date of application, no vote was ordered when the application for certification was first filed – Now, having found that the employer contravened the Act by threatening the job security of its employees and even terminating the employment of the original crew, and having determined that the union was unable to garner any additional support for its campaign, the Board decided that ordering a representation vote would be meaningless – No remedy short of remedial certification is sufficient to counter the employer's actions – Certificate ordered**

**BEFORE:** *Caroline Rowan*, Vice-Chair.

**APPEARANCES:** *Jesse M. Nyman* and *Chris Zimmer* appeared on behalf of the applicant; *Deborah Hudson* and *Jim VanderWal* appeared on behalf of the responding party.

**DECISION OF THE BOARD:** November 24, 2011

1. The style of cause is hereby amended to reflect the correct name of the responding party: "VanderWal Homes & Commercial Group".

2. Board File No. 0930-10-R is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") by the applicant, United Brotherhood of Carpenters and Joiners of America, Local 1946 ("the Union") on June 9, 2010 in respect of a bargaining unit of employees of the responding party, VanderWal Homes & Commercial Group ("VanderWal" or "the Company"). There are a number of outstanding issues remaining in this application, including the status of some fifteen individuals, a dispute concerning the appropriate bargaining unit description as well as the responding party's contention that the application should be dismissed for employer support.

3. Board File No. 0938-10-U is a related application filed under section 96 of the Act, in which the Union alleges that the Company violated sections 5, 70, 72, 76 and 87(1) of the Act and seeks by way of remedy, among other things, remedial certification without a representation vote pursuant to section 11 of the Act. More specifically, the Union contends that VanderWal violated the Act by terminating persons who spoke with, or joined, the Union on June 2nd, 2010. According to the Union, VanderWal did so in order to intimidate and coerce them into seeking to

abandon their rights under the Act and to prevent them from supporting an application for certification.

4. The parties requested that the Board first address the Union's unfair labour practice complaint and its claim for relief under section 11 of the Act, as well as the Company's related contention that the certification application should be dismissed for employer support having regard to section 15 of the Act. The parties further agreed that, in the event that the Company was found to have violated the Act as alleged by the Union, any additional remedy for such violations would be raised with the Board thereafter.

5. The Board heard from a total of seven witnesses. The following four individuals testified on behalf of the Company: Jim VanderWal and his wife, Mary VanderWal, Alex McGillivrey, a sales and marketing coordinator who works in the Company's office and who is also Jim and Mary VanderWal's son-in-law, and Pat McEachreon Senior ("Pat Senior"), a truck driver for the Company who works from time to time in its shop. The following three individuals testified on behalf of the Union: Jason Carver, one of the employees alleged to have been terminated contrary to the Act, Christopher Zimmer and Pat Martin, who are both representatives of the Union.

6. In arriving at my findings of fact in this case, I have considered all the evidence and have taken into account such factors as the demeanour of the witnesses, the clarity of their evidence, the witnesses' apparent ability to recall events and to resist the tug of self-interest in their responses to the questions, and what seems most reasonable and probable in all of the circumstances having regard to the evidence as a whole.

## Factual Background

7. VanderWal is in the business of fabricating, supplying, assembling and installing cold-formed steel framing systems. Its offices are located in Petrolia, Ontario, where it also has a manufacturing shop. The Company is jointly owned by Jim and Mary VanderWal.

8. The events in issue in this proceeding occurred at the beginning of June 2010. At that time, Paul Prelaz, Jim and Mary VanderWal's former son-in-law, was working as the Company's site supervisor at its project located at the St. Gabriel's Health Centre in Chelmsford, Ontario (the "Chelmsford site"). The Company's work at that site involved supplying and installing a steel framing system for a building and included constructing a roof on the ground and then lifting and installing it in sections.

9. Members of Paul Prelaz's crew included his brother, Dan Prelaz, who would take over as supervisor if Paul Prelaz was not there, as well as Mike Larson, Jason Carver, Luke Scott, Ken Caza, Jordan VanderWal, Jason Jensma, Glen Durance, Jeff Kerrigan, Lucas Vondette, Andrew Isaac, Tyson Isaac, Brent Snetselarr-Ewen ("Mr. Ewen") and Chris Boothe.

10. By the Spring of 2010, Paul Prelaz's relationship with Jim VanderWal's daughter had deteriorated to the point where they were no longer living together. According to the evidence, this led to problems between Paul Prelaz and the Company such that Paul Prelaz as well as his brother Dan Prelaz and Chris Boothe resigned their employment with VanderWal on or about May 17th, 2010.

11. After a lengthy discussion with Jim VanderWal that same day, the three of them reconsidered their decision and agreed to go back to the Chelmsford site so that Paul Prelaz could receive his bonus for completing the project on time. Paul Prelaz did not, however, return to the Chelmsford site until May 31, 2010, mere days before the alleged unlawful terminations of members of his crew on June 2, 2010. By that time, Chris Boothe was no longer part of the crew, since he had again quit his employment with VanderWal for his own personal reasons a few days earlier.

June 1, 2010

12. There is no real dispute in the evidence regarding what transpired on June 1, 2010, the day prior to the alleged terminations. On that date, members of Paul Prelaz's crew were attempting to lift sections of the roof under his direction. Paul Prelaz called Jim VanderWal at the Company's office in Petrolia to report that they were having difficulty lifting a section of the roof because it was heavier than was indicated on the drawings. Paul Prelaz called Jim VanderWal several times that morning to discuss the discrepancy between the weight of the roof registered on the crane and the weight indicated on the drawings.

13. Jim VanderWal had the office check the numbers on several occasions but could not get a different number from that indicated on the drawings and could not determine why the roof was overweight.

14. According to Mr. Carver's evidence, the crew worked from approximately 7 a.m. until approximately 6 or 7 p.m. on June 1st, 2010. On that date, Mr. Carver and other members of Paul Prelaz's crew were attempting to fly a section of the roof with the crane when they encountered difficulties lifting the second section of the roof because of its weight. They consequently stopped the lift and moved to the third section of the roof which they were able to complete that day.

15. At the end of the workday, the crew went back to the hotel and had dinner together. Although Paul Prelaz was not with them over dinner, Mr. Carver ended up speaking to him later that night at around 9 p.m., at which time Paul Prelaz informed him that he "had decided to pull his expertise off the job". Paul Prelaz also said that there was some discrepancy as far as not being able to get some direction from the office about how to proceed with the lift on the section that was miscalculated. Mr. Carver testified that he understood what Paul Prelaz was telling him to mean that Paul Prelaz was "cancelling his relationship" with the Company and that Mr. Carver was going to have to contact the office himself about being without a supervisor or equipment.

16. After speaking to Paul Prelaz that night, Mr. Carver got the rest of the crew members together after 9 p.m. that evening and tried to come up with a group decision about how they should carry forward in the circumstances. Mr. Carver testified that they decided at that time that Mr. Carver would contact the office to discuss the situation with Mr. VanderWal in the morning.

June 2, 2010

17. There were a number of inconsistencies in the evidence concerning what occurred on June 2, 2010, including the precise sequence and timing of events. With the exception of Mr. Zimmer, who took notes of events as they unfolded, none of the other witnesses who testified about what occurred that day purported to recall with precise accuracy the timing of events.

Mr. Carver, in fact, acknowledged that his account of the timing of the events was in all cases simply an approximation. The same appears to be true of the Company's witnesses, who could not similarly be expected to recall at the time they testified the precise time various events happened that day. As explained below, the discrepancies in the witnesses' respective accounts about the timing of events appear to be a function of their fading of memory and not the result of any deliberate attempt to mislead the Board.

18. According to Mr. Carver, the crew all gathered in the parking lot of the hotel in the morning on June 2, 2010. Mr. Carver spoke to Jim VanderWal on the phone that morning when Paul Prelaz, who was on his cellphone with Jim VanderWal, passed the phone to Mr. Carver. Mr. Carver testified as to his belief that that call took place at 8 a.m. However, since Jim VanderWal was using Mr. McGillivrey's cellphone when he spoke to Mr. Carver that morning, the precise time of that call was established, through Mr. McGillivrey's cellphone records, to have been at 8:50 a.m.

19. Mr. McGillivrey had been trying to reach Paul Prelaz's cellphone using his own cellphone that morning, because Paul Prelaz was not answering calls from the office telephone. Mr. McGillivrey was able to reach Paul Prelaz on his third attempt at 8:50 a.m., and then passed his cellphone to Jim VanderWal, who then ended up speaking to Mr. Carver.

20. According to Mr. Carver, during that call he explained to Jim VanderWal that he was the spokesman for the crew and that they felt they needed to come home as there was no direction or equipment on the site. Mr. Carver testified that Jim VanderWal was a bit upset and initially asked him to stay on site to perform other jobs. However, after Mr. Carver referred to safety concerns and the lack of supervision and equipment on site and also indicated that the crew would like to get paid whether or not they were working, Jim VanderWal agreed that they should come home. According to Mr. Carver, Mr. VanderWal at that point said "well if you guys can't go on site then you might as well come home".

21. Jim VanderWal disagreed with Mr. Carver's version of their conversation. In particular, Jim VanderWal disputed that there was any discussion about the crew being paid or not being paid. According to Jim VanderWal's version, Mr. Carver had indicated that he was speaking for all of the staff and that they had all quit because of safety concerns and were on their way home. Jim VanderWal then responded by telling Mr. Carver that there were other things to do at the site and that he would be there later that day. Jim VanderWal understood that the employees were already well on their way home at that stage and that they were not returning to the site even though Jim VanderWal was planning to head up there later that day. Jim VanderWal nonetheless did not suggest in his evidence that he had insisted that the crew return to the site to await his arrival.

22. There is, in any event, no dispute that, after this telephone conversation, Mr. Carver and the rest of the crew, including Paul Prelaz, drove home. Mr. Carver drove back in his own vehicle with some of the other members of the crew, including Mr. Durance, and Paul Prelaz drove back in his truck. The rest of the crew members drove back in the Company van.

23. At the first rest stop on their ride home, the crew discussed, and decided, to file a claim with the Employment Standards Branch of the Ministry of Labour for unpaid overtime hours. They also discussed getting in contact with a trade union to protect themselves in light of the situation. According to Mr. Carver, he asked Paul Prelaz if he knew anyone they could

contact and Paul Prelaz indicated that he did. Paul Prelaz then phoned the Union hall at around 10 or 11 a.m. that day looking for Kevin Hoy, one of the Union's representatives. Christopher Zimmer, who has known Paul Prelaz since high school, called him back. Paul Prelaz told him that he had an agreement with his boss that was not working out and that there were other guys who were "in the same boat". They arranged to meet at the Flying J truck stop, which they did later that day at around 5 p.m.

24. During the course of that same workday, Jim VanderWal, who was at the Petrolia office, tried to deal with getting the Company's project at the Chelmsford site back on track despite the apparent sudden resignation of Paul and Dan Prelaz and the decision of the rest of the crew to leave the site and head home.

25. Jim VanderWal testified that he first learned about this turn of events from Devin Arbuckle of Tribury Construction, the general contractor at the site, before he had spoken to Mr. Carver on the phone that morning. Jim VanderWal also testified that he immediately tried to contact Paul Prelaz by phone, but without success.

26. The Union suggested that Jim VanderWal's evidence about the sequence of these phone calls was not credible given that Jim VanderWal testified that Devin Arbuckle phoned him at approximately 9 or 9:15 a.m. on June 2, 2010 to advise that none of VanderWal's crew were on site that day. The Union also suggested that Mr. McGillivrey's contrary evidence that Mr. Arbuckle, in fact, called the office shortly after Mr. McGillivrey arrived at work at around 8 a.m. that day should not be believed either.

27. Little ultimately turns on whether Jim VanderWal first learned about the departure of the crew from Mr. Arbuckle or from Mr. Carver given that there is no dispute that Jim VanderWal did not learn about any union activity until much later that day. In any event, it seems most likely that Mr. McGillivrey's recollection that Mr. Arbuckle called earlier that morning is more accurate than Mr. VanderWal's recollection that Mr. Arbuckle called around 9 or 9:15 a.m. In this regard, I note that while Jim VanderWal could be expected to have a distinct recollection about being surprised to learn that the crew was not on site when Mr. Arbuckle called him, it is not surprising that his recollection of the precise timing of that call was inaccurate many months later when he testified. In addition, the fact that that telephone call from Mr. Arbuckle occurred earlier than Jim VanderWal believed explains why Mr. McGillivrey was attempting to contact Paul Prelaz using his cellphone commencing at 8:30 a.m. According to Mr. McGillivrey's cellphone records, he attempted to reach Paul Prelaz first at 8:30 a.m., again at 8:46 a.m., and was finally successful on his third attempt at 8:50 a.m.

28. In all the circumstances, I accept as credible Jim VanderWal's evidence that he had no idea Paul Prelaz's crew was not on site that day until Mr. Arbuckle called him that morning. Up to that point, he knew only that there had been a problem with the lift of a section of the roof the day before.

29. Bill Burn from AllCanada Crane also contacted Jim VanderWal later that morning to indicate that he had a crane on site and did not know where VanderWal's crew was or what he should do.

30. Later that same morning, at 10:02 a.m., Mr. Arbuckle followed up with an e-mail to Jim VanderWal expressing his concern about the progress of the work at the site. The content of that e-mail reads as follows:

> Your inability to fulfill your contractual obligations has now put this project in a very precarious situation. We are behind schedule now, with your inability to show proof of material and installation methods and the implication and time this has caused. We have major concerns from yesterday's performance with your roof weight calculations and the damage this has caused to the trusses, not to mention the safety factor. Your men are not on site due to this fact, and there is still a substantial amount of outstanding work.
>
> My conversations with you has not proven to be of any urgent matter to you. Delay of project will be discussed and recorded.
>
> I highly recommend that you be on site tomorrow morning to discuss this matter and inform us on how you will complete your contract without further costs implications.

31. Shortly after receiving that e-mail, Jim VanderWal sent an e-mail to Paul Prelaz at 10:09 a.m., in which he states:

> When is my truck going to be back?
> I need it to go back up and continue the remainder of the job.
> Who ever wants to work should let me know.
> Tony crew (sic) will also be there tomorrow.
> I will be up late today and we are fling (sic) the roof tomorrow afternoon or Friday morning.

Jim VanderWal indicated that, at the time he sent this e-mail, he was planning to head up to the Chelmsford site later that day and that he knew the crew was heading back to Petrolia. He also acknowledged that he may have taken whoever wanted to work back, but that he could not supervise a crew that size with just himself and Mr. Peters available to do the supervision.

32. Jim VanderWal testified that, as soon as he realized the crew had vacated the site, he phoned Tony Boudreau, a contractor with whom he had worked in the past, to make arrangements to have Mr. Boudreau complete phase 2 of the work at the Chelmsford site, which involved the other half of the building. Mary VanderWal then followed up with an e-mail providing the drawings at 11:47 a.m. An e-mail exchange between Jim VanderWal and Mr. Boudreau then occurred at or around 12:40 p.m. on June 2, 2010 regarding the contract arrangements, such as the price to be paid by VanderWal for different portions of the work.

33. According to Jim VanderWal's evidence, everything was "etched in stone" for Mr. Boudreau and his crew to do the work at the Chelmsford site and that, up to that point, he had heard nothing about union activity. All he knew was that the crew had vacated the site and were heading home. Jim VanderWal acknowledged that, at that point in time, he was willing to take some of the crew members back to the site. Jim VanderWal's e-mail to Mr. Boudreau at 12:40 p.m. also refers to Jim VanderWal's plan to complete the remainder of the project himself with his remaining crew.

34. Jim VanderWal explained his reasons for hiring Mr. Boudreau to perform the second phase of the project were that he knew he needed another option to complete the work at the Chelmsford site because of what had happened on May 17th when Paul and Dan Prelaz and Chris Boothe resigned. He explained that Paul and Dan Prelaz as well as Chris Boothe, who, as noted, had quit for personal reasons days before the events in issue, were the only possible supervisors available to supervise the crew. Jim VanderWal therefore recognized that he had a crew at the Chelmsford site but no one to run it.

35. Although Jim VanderWal had planned to go up to the Chelmsford site later that evening with some of his shop employees, he cancelled that plan after he received a Ministry of Labour report that same day. In that report, the inspector ordered, among other things, that the hoisting operation for the roof segments not proceed until the load estimate and pick up point design was completed by a professional engineer and a copy provided to the inspector. That investigation had apparently occurred as a result of a call to the Ministry of Labour from staff to report that the roof was overweight. In order to comply with the order, Jim VanderWal cancelled his original plan to head up to the Chelmsford site that night and decided to remain at the office instead so that he could make arrangements to comply with the direction to obtain the necessary engineering report.

36. According to Pat Senior's evidence, he was going to go up to the Chelmsford site that night with Jim VanderWal until he was advised at around 5 or 5:15 p.m. of the change of plan just as he was finishing loading the tools into the truck to bring up with them.

### Meeting with the Union's Representative at 5 p.m. on June 2, 2010

37. At approximately this same time, Mr. Zimmer met with Paul Prelaz and with members of his crew, who had returned from Sudbury, at the Flying J rest stop in London, Ontario. Mr. Carver spoke on behalf of the crew at the meeting and explained their safety concerns to Mr. Zimmer. Mr. Zimmer then asked them if they would like to join the Union and, if so, they could sign cards and be represented. Ten of the crew members signed cards at that time. Mr. Zimmer then advised them to let him know if they were going back to work the following Monday. According to Mr. Zimmer's evidence, the crew talked about going back up to the job site so that they could bring the certification application and no one said anything to him about having quit their employment with VanderWal.

38. According to the uncontradicted evidence of both Mr. Carver and Mr. Zimmer, Paul Prelaz was present at the meeting but had no involvement in the discussion about joining the Union. This meeting was the only occasion at which the Union obtained signed membership cards on behalf of employees of VanderWal. As such, all of the cards filed with the Union's certification application were signed at that meeting.

### After the Meeting with the Union's Representative on June 2, 2010

39. Jim VanderWal testified that he first learned about the crew's meeting with the Union at around 6 p.m. that night from Pat Senior, who had, in turn, heard about it at around 5:30 p.m. when his son, Pat McEachreon Junior ("Pat Junior") called his father at work after speaking to Paul Prelaz. Jim VanderWal referred in evidence to his understanding that Paul Prelaz had convinced the guys to join the Union because he was going to "get even" with VanderWal because of the issues between himself and Jim VanderWal's daughter. Jim VanderWal also

noted that he "was not impressed" when he learned about the fact that the crew had met with the Union, but nonetheless felt it was more of a "non-issue" because the guys had left the site. In this regard, he explained that he knew from an earlier certification application that had been filed in respect of his employees in 2001 or 2002 that the employees had to be working on site for an application for certification to proceed.

40. According to Jim VanderWal, approximately seven members of the crew returned to the shop in Petrolia at around 7 p.m. that night. His recollection is that Mr. Carver and Mr. Durance were there and that they were the spokespeople for the rest of the crew members who showed up and that they explained at that time that the crew had left the site because of safety issues relating to the weight of the roof. According to Jim VanderWal's evidence, they did not discuss going back to work at that time, other than to discuss that they would have to regroup and see what was required. He explained that he did not confirm with them at that time that they were not going to go back to work at the site, regardless of whether they wanted to or not, because there were seven of them and he was by himself. Jim VanderWal however acknowledged that, when members of the crew arrived at the shop and explained why they had left the site, "they were basically going to go back up to work". As such, according to Jim VanderWal's evidence, members of the crew expressed their willingness to return to the site when they arrived at the shop that night, but he made no commitment one way or the other as to whether he would return them to the site.

41. After everyone had left the shop, Jim VanderWal went into the truck and discovered that there were quite a few tools missing, including all the fall arrest systems, the safety harness, the lasers, etc. He estimated the cost of the missing tools at just under $19,000. He explained that he did not pursue the matter with the police given his belief that Paul Prelaz, who is the father of three of his grandchildren, was responsible for taking the majority of the missing tools. Jim VanderWal testified that the discovery that the tools were missing frustrated him more than anything else in that the crew had not only vacated the site but had also made it virtually impossible to continue working. According to Jim VanderWal, this was the biggest reason his crew did not return to the site until June 7th. After he discovered that the tools were missing, he wanted to confront the crew members about it and decided that he was going to confirm that none of them were coming back to work regardless because of the missing tools.

42. Mr. Carver disputed Jim VanderWal's version of the events that evening.

43. According to Mr. Carver, neither he, nor Mr. Durance, went to the shop at all that day. Mr. Carver instead maintained that he had spoken to Jim VanderWal only by telephone that night, since he had gone home after the meeting with Mr. Zimmer without stopping at the Company's shop. According to Mr. Carver's evidence, Jim VanderWal called him at his home at around 6 or 7 p.m. on June 2nd, at which time Mr. Carver expressed his concerns about some safety issues and Mr. VanderWal agreed that they would be taken care of. Mr. VanderWal then indicated that, in light of the fact that the equipment was no longer on site, he would need a couple of days before resuming work. During this telephone conversation, Mr. Carver expressed to Mr. VanderWal that at no time did he want to terminate his position with VanderWal, and that that was also the feeling of the others who were working up at the Chelmsford site, other than Paul Prelaz. According to Mr. Carver, they then agreed over the phone that Mr. Carver would return to work at the Chelmsford site the following Monday and that Mr. Carver would contact the other employees. Thereafter, Mr. Carver telephoned Mr. Zimmer to advise that they would be heading back to the site the following Monday.

44. Mr. Zimmer confirmed in his evidence that he had received a voicemail message at around 8:20 p.m. that night from Mr. Carver indicating that "it was pretty much a go" for Monday.

45. Having regard to all of the evidence, it seems most likely that Jim VanderWal is mistaken about the fact that Mr. Carver was among those who returned to the Petrolia shop that night and therefore that his conversation with Mr. Carver at around 6 or 7 p.m. on June 2nd was in person at the Petrolia office, rather than over the phone. In this regard, I note that Mr. Carver's contention that he spoke to Jim VanderWal over the phone that night when he was at home is consistent with what Mr. Carver indicated in his written statement made at Mr. Zimmer's request the following day when the events were fresh in his mind. While it was suggested that their conversation must have occurred at the Petrolia office because Jim VanderWal would not otherwise have known that Mr. Carver had travelled back by car with Mr. Durance, it is certainly possible that that fact was communicated to Jim VanderWal by someone such as one of the crew members.

46. In any event, regardless of whether their conversation was at the office or over the telephone, I accept that, during their first conversation that night, Mr. VanderWal, at a minimum, gave Mr. Carver the impression that the crew would be going back up to the site the following week. In this regard, I note that it seems unlikely that Mr. Carver would have left a message for Mr. Zimmer that night about his belief that they would be back at work at the site the following Monday if Mr. VanderWal had not at least given him that impression.

47. There is no dispute that Mr. Carver and Jim VanderWal spoke again by telephone later that night at or around 9 p.m. Mr. Carver testified that, during that call, Mr. VanderWal indicated that he had heard that they had gotten in contact with the Union and then said that "because [he] had talked to the Union, as of this morning all of you guys quit your job". After his phone call with Mr. VanderWal, Mr. Carver contacted Mr. Zimmer again at around 9:30 p.m. to inform him that the arrangements to go back up to Chelmsford site had been changed and that they were not going back to work. Mr. Carver arranged to meet with Mr. Zimmer and the other employees at Mr. Carver's residence on Thursday, June 3rd.

48. Jim VanderWal acknowledged that he had ended up calling every one of the crew members he could get hold of later that night. According to his version of those calls, he explained to them not only that he considered that they had quit their job, but that the other issue was that the tools were missing. When asked what reason he had given them, he noted that the biggest issue was that they had left the site without notifying the office or himself. The second issue was that there were a substantial number of tools missing from the truck.

49. There is no dispute that Jim VanderWal had heard about the crew's meeting with the Union by the time he made those calls and that he raised the issue of the Union during those calls. While Jim VanderWal did not purport to recall precisely what he had said, he acknowledged in evidence that he had "gone fishing" during his telephone conversations with members of the crew to find out if they had, in fact, met in London to sign up with the Union. He also acknowledged that, during those calls, he probably did say something to the effect that because the crew had left the site and signed with the Union, they no longer had a job.

50. When it was put to him in cross-examination that the fact that the crew had spoken to the Union and had signed cards impacted his decision not to bring them back to work, Jim

VanderWal acknowledged that that fact may have impacted "who" he brought back to work. He also added that, in the end, the crew members he did end up bringing back up to the Chelmsford site were the ones who contacted him later that week and asked to be returned to the job site.

June 3 and 4, 2010

51. Mr. Carver contacted Jim VanderWal the next day, on June 3, 2010, to ask about his record of employment and also to advise him that the crew members had talked to Employment Standards and that they were pursuing payment of overtime hours.

52. Shortly before 10 a.m. on Thursday June 3rd, Mr. Zimmer got a call from Mr. Kerrigan asking that his membership card be ripped up. Mr. Kerrigan explained that he had been fired and that everyone who signed a card had been fired. Mr. Zimmer responded by asking him to wait and think about it and that they would see what they could do. Mr. Zimmer then started calling the other parties involved, such as Paul Prelaz and Mr. Larson.

53. Mr. Zimmer spoke to Mr. Carver at approximately 10:30 a.m. and learned that members of the crew would be meeting at Mr. Carver's house at 1 p.m. that day. Mr. Zimmer then left messages for Mr. Jensma, Mr. Scott and Mr. Ewen. Mr. Zimmer spoke to Mr. Caza, who told him that Jim VanderWal wanted him to come back to work but that, before he would be able to come back, he had to sign a letter saying that he was not interested in joining a union. Mr. Zimmer then spoke to Mr. Carver again that morning, at which time Mr. Carver told him that Jim VanderWal had got wind of the crew talking to the Union and that because they left the job, they had automatically quit. Mr. Zimmer understood from Mr. Carver that Jim VanderWal was taking the position that they had quit.

54. Later that day, at around 1 p.m., Mr. Zimmer attended the meeting at Mr. Carver's house with most of the workers from the Chelmsford site. There is no dispute that Jim and Mary VanderWal drove past Mr. Carver's house several times while this meeting was taking place. Mr. Zimmer asked the crew members in attendance to make a written statement in their own words regarding the events that week. He obtained written statements from Mr. Durance, Mr. Caza, Mr. Jensma, Mr. Carver, Jason VanderWal, Mr. Scott, Mr. Larson and Mr. Kerrigan at that time, which statements were entered into evidence. In assessing the evidence in this case, I accept the Company's contention that those statements should not be relied upon for the truth of their content, particularly in the absence of any explanation regarding why those individuals, other than Mr. Carver, were unable to testify.

55. That same day, Mr. Kerrigan, to whom Jim VanderWal had spoken the night before to advise that his services were no longer required, came into Jim VanderWal's office and told him he was pressured into signing a card but that he really wanted to continue working for the Company. According to Jim VanderWal's uncontradicted evidence, Mr. Kerrigan offered to sign a paper saying he did not want the Union. Mr. Caza and Mr. Ewen and Mr. Vondette also contacted Jim VanderWal that week and explained to him that they had no choice but to return home because the Company truck was leaving the site and they had no transportation. Jim VanderWal told both Mr. Caza and Mr. Ewen that, before they could come back to work at the Chelmsford site, they had to sign letters to the same effect as Mr. Kerrigan's, which they both did and provided to Jim VanderWal that week. Mr. Kerrigan's letter states as follows:

> "My name is Jeffrey Kerrigan [.] I did not sign a Union Card [.] I was intimidated into signing the card [.] I don't even like the idea of the Union. So I don't want to (sic) Union."

56. Mr. Caza's statement has his name at the top and states:

> "I have spoken to Jim and would like to work for him [.] I have no interest in joining a union."

57. The content of Mr. Ewen's letter dated June 3, 2010 similarly states:

> "This letter was requested by you Mr. Jim VanderWal, to state that I Brent Snetselaar-Ewen DID NOT SIGN any Union card on Wednesday June 02, 2010 at the Flying J in London, Ontario. And that I Brent Snetselaar-Ewen have NO intention to sign any type of Union cards or sign up for any Union type person to visit myself or anyone while I am in the employment of VanderWal Homes & Commercial Group".

58. Jim VanderWal acknowledged in evidence that these letters were a condition of returning to work.

59. On June 4, 2010, Mr. Zimmer received a telephone call from Mr. Ewen indicating that he had changed his mind and that it was too soon for him to join the Union.

60. Sometime on either June 3 or 4, 2010, Jim VanderWal hired back the following four crew members to complete phase 1 of the work at the Chelmsford site: Mr. Ewen, Mr. Kerrigan, Mr. Caza, and Mr. Vondette.

The following week – June 7, 8 and 9, 2010

61. Commencing the week of June 7th, Mr. Ewen, Mr. Kerrigan, Mr. Caza, and Mr. Vondette worked at the Chelmsford site together with a number of shop employees (Dave McKay, Kevin Cox, Marcy Jacques and Pat Senior) under the supervision of Jim VanderWal and Henry Peters. Tony Boudreau's crew also showed up on June 7th. According to Mr. VanderWal, he had enough work to keep nine people busy for a two week period from June 7 to 15th, 2010.

62. All of the crew members were aware of the interaction between the Union and Paul Prelaz's crew and that Jim VanderWal was not happy about it. During the week of June 7th, 2010, they worked on shortening up or lowering four of the walls, installing some non-structural panels and some bracing work as well as removing some fasteners. On June 9, 2010, the date of the certification application, Jim VanderWal's crew completed some polyurethane insulated panels on some exterior walls, did some bracing, and also checked the roof that was still on the ground to confirm that everything was complete.

63. On June 7, 2010, Mr. Caza responded to a text message from Mr. Zimmer's by texting back that they were within an hour away (presumably from the site) and that Ken (Caza), Lucas (Vondette) and Jeffrey Kerrigan were all riding up together. Although Mr. Zimmer sent Mr. Caza several more text messages shortly thereafter, Mr. Caza did not respond to them.

64. Mr. Zimmer headed up to Sudbury on June 8, 2010 at around 5 p.m. and picked up Pat Martin, a representative of the Union, at the Sudbury union hall before heading over to the Chelmsford site where he saw ten guys working putting up the insulated panels.

65. Mr. Zimmer went back to the job site the next morning on June 9, 2010 and took a number of pictures of the site and of the work being performed. He was there for a total of between 15 and 20 minutes that day, during which time he observed VanderWal's crew doing work of the carpentry trade, such as bracing walls and generally preparing to install wall panels.

66. Mr. Zimmer indicated that he approached one of the workers and asked him if he was interested in the Union. That individual however simply walked away. He then approached another worker, who was screwing the sections of the wall panels together in preparation for a lift. When Mr. Zimmer asked him if he considered working in the Union, the worker did not answer. This second worker (who would not give Mr. Zimmer his name) then agreed with Mr. Zimmer's suggestion that it was because he was not allowed or will get fired and noted that that is what happened to the last guy. Mr. Zimmer testified that he then left in order to avoid any more "firings" and proceeded to make arrangements to file the present certification application. Mr. Zimmer acknowledged that it was possible that the people he encountered on the job site may not have been VanderWal workers, such as men from Mr. Boudreau's crew.

67. Mr. Martin was present when Mr. Zimmer approached these two individuals. According to Mr. Martin, they both replied "yes" when Mr. Zimmer asked them if they were employees of VanderWal. Mr. Martin also corroborated Mr. Zimmer's version of his interaction with them and noted that the two workers in question were working on heavy gauge steel stud walls.

68. Pat Senior testified about having been approached by a union representative sometime in the week of June 7, 2010 when he was running the forklift. According to his evidence, when the union representative introduced himself, Pat Senior directed him to speak to Jim VanderWal as a joke.

69. On the evening of June 9th, Mr. Zimmer got a call from Mr. Caza, who told him that he was in the bathroom with the shower and the radio on so that no one would find out he was giving the Union information. Mr. Caza indicated that there were nine guys working up at the site for VanderWal.

70. According to Mr. VanderWal's evidence, on June 9, 2010, the following nine employees of VanderWal were working at the Chelmsford site: Mr. Caza, Mr. Kerrigan, Mr. Ewen, Mr. Vondette, Pat Senior, Dave McKay, Henry Peters, Kevin Cox and Martha Jakes.

## Decision

71. The first issue to be determined in this case is whether the evidence before the Board discloses that VanderWal violated sections 5, 70, 72, 76 and 87(1) of the Act by refusing to re-employ members of Paul Prelaz's crew after June 2nd because they spoke with or joined the Union as alleged.

72. The relevant provisions of the Act read as follows:

> **Membership in trade union**
> **5.** Every person is free to join a trade union of the person's own choice and to participate in its lawful activities.
>
> ...
>
> **Employers, etc., not to interfere with unions**
> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.
>
> ...
>
> **Employers not to interfere with employees' rights**
> **72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,
>
> ...
>
> (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.
>
> ...
>
> **Intimidation and coercion**
> **76.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.
>
> ...
>
> **Protection of witnesses rights**
> **87.** (1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,
>
> (a) refuse to employ or continue to employ a person;
>
> (b) threaten dismissal or otherwise threaten a person;
>
> (c) discriminate against a person in regard to employment or a term or condition of employment; or

> (d) intimidate or coerce or impose a pecuniary or other penalty on a person,
>
> because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.
>
> ...
>
> ...
>
> **Burden of Proof**
>
> **96.** (5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

73. The Union's allegation that VanderWal refused employment to, or discharged, persons who spoke with or joined the Union engages the reverse onus provision in subsection 96(5) of the Act. The burden of proof is therefore on the Company to demonstrate that it did not act in violation of the Act when it failed, or refused, to return all of the members of Paul Prelaz's crew to the Chelmsford site after June 2, 2010.

74. While the Company argued that I should draw an adverse inference from the Union's failure to call Paul or Dan Prelaz or any other members of the crew beside Mr. Carver to testify that members of the crew quit their employment with VanderWal on June 2nd, 2010, I cannot accept that contention. In this regard, I note that the onus is not on the Union to prove that members of the crew did not quit their employment. Rather, it is the Company that has to establish that no part of its reasons for failing to return all members of Paul Prelaz's crew at the Chelmsford site after June 2, 2010 was because of their union activities. As such, the question of whether they did or did not quit that day is relevant only to the Company's defence to the effect that the reason they were not returned to the Chelmsford site the following week was because Jim VanderWal considered them to have abandoned their employment on June 2nd, 2010. In the circumstances, the failure of any of the members of Paul Prelaz's crew to testify simply means that the Board must assess whether the Company has discharged its evidentiary burden having regard to the evidence of those who did testify.

75. In the present case, that evidence indicates that, regardless of whether or not Jim VanderWal believed that members of Paul Prelaz's crew had quit their employment when he learned from Mr. Carver that they were heading home just before 9 a.m. on June 2nd, he was still prepared at 10 a.m. that day to return any one of them to work at the site if they were willing to go back. This fact is apparent from the e-mail that Jim VanderWal sent to Paul Prelaz at 10:09 a.m. on June 2nd, which, as noted, states, in part: "…I need to go back up and continue the remainder of the job. Who ever wants to work should let me know. Tony's crew will be there tomorrow…". As such, irrespective of what Mr. Carver communicated to Jim VanderWal earlier that morning during their telephone call at 8:50 a.m., Jim VanderWal remained prepared at

10 a.m. that day to take any crew member back to work with him at the Chelmsford site notwithstanding that he knew at that time that the crew had left the site and were heading back to Petrolia.

76. The evidence also indicates that, in addition to the work Mr. Boudreau's crew had been hired to do, there remained work to be done at the Chelmsford site and that Jim VanderWal needed his own crew to do it. According to Jim VanderWal's testimony, he contacted Mr. Boudreau about doing the second phase of the job as soon as he learned that the crew had left the site, because he no longer had any supervisors for the site and he could not supervise the balance of the project himself given his other obligations. The e-mail Jim VanderWal sent to Paul Prelaz that morning confirms that, before Jim VanderWal learned about any union activity that day, his plan was to have the second phase of the project at the Chelmsford site done by Mr. Boudreau's crew and to complete the remaining work with his own crew, including anyone from Paul Prelaz's crew who was willing to go back.

77. As such, even if I had accepted Jim VanderWal's evidence that he never indicated to any of the members of the crew, including Mr. Carver, that he would return them to the Chelmsford site, the evidence before me reveals that he had a change of heart about permitting the crew to return to the Chelmsford site between 10 a.m. that morning, when he sent Paul Prelaz the e-mail, and approximately 8 or 9 p.m. that night, when he telephoned members of the crew to communicate his position that they had abandoned their employment. The question is therefore what changed between 10 a.m. that day and 8 or 9 p.m., when Jim VanderWal called members of the crew.

78. As noted, Jim VanderWal's original plan to head back up to the Chelmsford site that same evening was delayed because of receipt later that day of the Ministry of Labour report. He did not therefore ultimately return to the site with his own crew until the following week, on Monday, June 7, 2010, when Mr. Boudreau's crew also arrived.

79. The only other significant events which occurred prior to the phone calls Jim VanderWal made to the crew members that night were that he learned both about the meeting between members of the crew and the Union's representative at 5 p.m. that day and also that a substantial number of the Company's tools had gone missing.

80. Jim VanderWal discovered that the tools were missing shortly after members of the crew returned to the shop at or around 7 p.m. on June 2nd, at which time, according to his evidence, they explained why they left the site and indicated that "they were basically going to go back up to work." In other words, according to Jim VanderWal's own evidence, the crew members who returned to the shop that night expressed their willingness to return to work at the Chelmsford site and he did not respond "yes" or "no" at that time because there were seven of them and only one of him.

81. While I have no doubt that Jim VanderWal was furious about the costly disappearance of his tools, the evidence before me falls far short of establishing that the crew's union activities that night played no role in his decision to treat members of the crew as having abandoned their employment. In this respect, I note that, according to his own evidence, when he made those telephone calls that night, the "biggest" issue he raised was the fact that the crew had left the site and had not notified the office. However, what he described as the "biggest" issue in treating

their employment with VanderWal as at an end was not something which he had earlier that day viewed as an impediment to returning them to work at the Chelmsford site.

82. In addition, while the Company attempted to suggest that it could not perform the remaining work without the tools that had gone missing, those missing tools did not prevent Jim VanderWal from returning to the Chelmsford site with a crew of workers to complete phase one of the project the following week. Pat Senior's testimony also indicates that the Company had additional tools in Petrolia to bring up to the site. In that regard, I note Pat Senior's testimony that he had just finished packing the tools in the van late in the day on June 2nd when he learned that the trip to the Chelmsford site that night had to be postponed.

83. It is further apparent from Jim VanderWal's own evidence that the crew's union activities were also on his mind when he communicated his decision to treat their employment as having been abandoned. In this regard, he acknowledged that he had gone "fishing" for information about the Union during his telephone calls to members of the crew that night. Jim VanderWal also acknowledged in evidence that the fact that members of the crew had met with the Union's representative may have influenced "who" he was prepared to bring back to the site with him and that he knew that the employees had to be working on site for an application for certification to proceed. In addition, the fact that he had those who called him later that week asking for their job back sign a statement denouncing any interest in the Union as a condition of their returning to work suggests that the crew's union activities on June 2nd did, in fact, influence "who" he was prepared to take back to the site.

84. Having regard to the evidence before me, I find that anti-union animus played a part in the Company's decision to treat members of Paul Prelaz's crew as having abandoned their employment on June 2nd with the result that not all members of the crew were permitted to return to the Chelmsford site the following week. In failing to return all of the original crew members to the site commencing on June 7th, the Company sought to interfere with their representation by the Union and to compel its employees to refrain from becoming or to continue to be a member of the Union contrary to sections 70, 72 and 76 of the Act. In the circumstances, it is unnecessary to determine whether that failure also resulted in a breach of section 87(1) of the Act, which allegation was not, in any event, pursued by the Union in final argument.

### *Appropriate Remedy in relation to the Certification Application*

85. Having found that the responding party contravened the Act, I will next address both the Union's contention that remedial certification under section 11 of the Act is warranted in this case, and the Company's contrary submission that the certification application should instead be dismissed under section 15 of the Act because of Paul Prelaz's involvement in it.

#### *(i) Alleged Employer Support*

86. Section 15 of the Act reads as follows:

> **What unions not to be certified**
> **15.** The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against

> any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms.*

87. In determining whether the Board is precluded from certifying the Union because of the operation of section 15 of the Act, it should be noted that there is no suggestion in the present case that the Company participated in the formation or administration of the Union or that it contributed financial support to it. The issue is therefore whether the actions of Mr. Prelaz, a former site supervisor with the Company, constitutes the provision of "other support" to the Union within the meaning of section 15 of the Act.

88. When considering what constitutes "other support", the Board has applied a purposive, rather than a literal, approach. In *Superior Boiler Works & Welding Ltd.,* 2010 CanLII 68943 (ON LRB), the Board recently reviewed the history of the application of section 15 of the Act in an effort to reconcile two competing lines of authority that had developed in the Board's jurisprudence regarding whether the trade union concerned had to be aware of the support offered to it by an employer to warrant dismissal of the certification application. In reconciling these competing positions, the Board adopted a purposive approach to the interpretation of the scope of section 15, reasoning as follows:

> 54. In my view the place to start one's consideration of this question is section 2 of the Act. Section 2 states that one of the purposes of the Act is to facilitate collective bargaining between employers and trade unions that are the *freely-designated* representatives of the employees. Subject to remedial certification authorized by section 11 of the Act, in the normal course a trade union can secure a certificate from the Board only if it can establish that it is the "freely-designated" representative of the employees in the bargaining unit. It is this underlying purpose of the Act that informs the approach taken by the Board to section 15 of the Act that is reflected by *Covertite Eastern Limited,* cited above. In that decision, at paragraph 56, the Board notes that it is employer support "which is of a character or proportion such that it is reasonable to infer that employees have not exercised a free choice in the matter of the selection of a bargaining agent" that triggers the application of section 15. The Board must be satisfied that the choice made by employees is, in fact, a reflection of the free will of the employees in question, and not something else.

The Board consequently determined that section 15 was not intended to address only circumstances involving collaboration between an employer and a trade union, but rather was, more generally, intended to preclude a trade union from securing bargaining rights where it cannot reasonably be said to be the freely-designated representative of those employees due to the actions of the employer.

89. Employer actions which send a message to employees of the employer's preference for one bargaining agent or another have generally been found to constitute "other support" within the meaning of that section, since the Board cannot, in those circumstances, be satisfied that the employees were freely choosing one bargaining agent over the other. As noted, in *Covertite Eastern Limited,* [1996] OLRB Rep. May/June 386 at para 61, when the message sent by the employer to its employees "…extended to specific support for another bargaining representative, the line set by section 15 was crossed". That was the situation before the Board in both *Superior Boiler Works & Welding Ltd.,* cited above, and *Pre-Eng Contractors Ltd.,* [2008]

OLRB Rep. March/April 284 at para 25, on which the Company relied in support of its position that the present application should be dismissed for employer support.

90. In *Superior Boiler Works & Welding Ltd.*, cited above, the Board found it appropriate to exercise its authority under section 15 to dismiss an application brought by the Canadian National Federation of Independent Unions ("CNFIU"), in circumstances where representatives of the employer held a captive audience meeting, in which it threatened employees against joining the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 ("Local 67") and urged them to join instead a trade union such as CNFIU. Representatives of the employer were also found to have reiterated the employer's message that CNFIU was the preferred choice in a number of different ways throughout the CNFIU campaign. In view of its finding that the employer's actions prevented its employees from making a free choice regarding who would become their bargaining representative, the Board determined that the employer had offered "other support" to the CNFIU as defined by section 15 of the Act and CNFIU's certification application was therefore dismissed.

91. Similarly, in *Pre-Eng Contractors Ltd.*, cited above, the Board found evidence of the kind of mischief that section 15 of the Act was meant to prevent where a number of the employer's site superintendents sent a message to the employees that CLAC was to be preferred over another trade union. In the circumstances, the Board determined that it could not rely on the membership evidence submitted by CLAC as a representation of the true wishes of the employees.

92. However, as noted by the Board in *Pre-Eng Contractors Ltd.*, cited above, any set of facts must be seen in its proper context in order to determine whether they are evidence of the kind of mischief which section 15 of the Act seeks to prevent. The Board referred in that connection to the fairly uniform meaning and application given to section 15 described in *Covertite Eastern Limited*, cited above at para 56:

> 56. The Board has made clear in its jurisprudence that the purpose of section 15 is to preserve the arm's length relationship between unions and employers which is fundamental to the structure of the Act. A purposive, rather than literal, application of the section has found favour in the Board's jurisprudence, and is in our view the appropriate approach. Thus, not everything that an employer does that might be said to be supportive of an organizing campaign is sufficient to warrant the application of section 15. It is activity which is of a character or proportion such that it is reasonable to infer that employees have not exercised a free choice in the matter of the selection of a bargaining agent. See, for example, *Edwards v. Edwards*, (1952) , 52 CLLC para. 17,027 and *Ontario Hydro*, [1989] OLRB Rep. Feb. 185 and *University of Toronto*, [1988] OLRB Rep. March 325. The purposive interpretation has meant that the provision of a list of employees to a union in an organizing drive by the employer contravened section 13 [now 15] in *Tri-Can*, [1981] OLRB Rep. Oct. 1509 but not in *Continuous Mining*, [1990] OLRB Rep. April 404, because in the former the trade union applicant had been formed to thwart another union's organizing attempts, while the applicant in the latter had a long history of arm's length collective bargaining with the parent of the employer.

Any given action by an employer will not therefore in all cases warrant the application of the section depending on whether the context reveals the type of mischief to which section 15 of the Act is directed. The overall context must be considered in determining whether the activity is of such a character or proportion that it is reasonable to infer that employees have not freely chosen their bargaining agent.

93. The Board has consequently distinguished between support tendered by managerial employees who are acting on behalf of, or in the interests of, the employer and those acting on their own initiative against the interests of the employer and in support of the employees' interests. In *Adidas Textile (Canada) Ltd.,* [1980] OLRB Rep. May 639, the Board explained the rationale for this distinction in relation to the purpose of section 15 as follows:

> … The purpose of the section, in keeping with the scheme of the Act, is to maintain the necessary arm's length relationship between employers on the one hand, and trade unions, as representatives of employees, on the other. In applying section [15], the Board draws a distinction between support tendered by the employer, either directly or through persons holding managerial positions within his organization, and support tendered by persons who occupy management positions but act on their own initiative against the employer's interest in support of the interests of the employees. Although a question may arise in these latter circumstances as to the voluntariness of the membership evidence, the necessary arm's length relationship between employer and trade union may not be undermined in a manner which requires the automatic application of the section [15] bar. In rejecting the automatic application of the section [15] bar in these circumstances (as in the *Leamington Hospital* case, [1973] OLRB Rep. June 376) the Board stated at para. 14 of the *Children's Aid Society* case, *supra*:
>
>> …The Board recognizes that in the modern organizational setting interests of individual person deemed to be managerial are not necessarily coincidental with those of the employer. If the evidence establishes that such persons acted on behalf or in the interests of the employer then undoubtedly the section [15] bar would apply. If, however, the evidence establishes that the persons acting not on behalf of the employer but contrary to the wishes and interests of the employer (see *Air Liquide* case (1964 CLLC 16,002) then it cannot be said that the employer has participated contrary to section [15] , or section [70] for that matter. Similarly, if the evidence establishes that the disputed persons have been acting in their self-interest rather than on behalf of or in the interest of the employer, then again section [15] should not be activated.

The concern about the establishment of "sweetheart unions", which underlies the authority granted to the Board under section 15 of the Act to dismiss an application, does not arise in circumstances where a manager or foreman was clearly acting contrary to the employer's interests and would have been seen to be so motivated by any employee. As noted in *National Dry Company Ltd.,* [1980] OLRB Rep. Aug. 1217, at para 12, "[w]hen that is the case the section [15] bar to certification does not arise and there is no reason to presume, absent substantial evidence to the contrary, that the employees were subjected to undue influence in their decision to join a union."

94. In the present case, there can be little doubt that Paul Prelaz was acting on his own initiative in support of the employees' interests, rather than in VanderWal's interests, when he contacted a representative of the Union on June 2nd and arranged for members of his crew to meet with Mr. Zimmer later day. According to the evidence, Paul Prelaz contacted Mr. Zimmer only after he had abandoned work at the site and left his crew without a supervisor and therefore the ability to continue working. Paul Prelaz became involved in assisting the crew to contact a trade union only after the crew had discussed at the first rest stop on their way home that that is what they wanted to do and Mr. Carver then asked Paul Prelaz if he knew anyone they could contact. In responding to Mr. Carver's inquiry and contacting representatives of the Union with whom he was acquainted on the employees' behalf, Paul Prelaz was doing so in support of the employees' interests and against the Company's interests and, in all the circumstances, would have been seen to be so motivated.

95. The present case therefore differs from that before the Board in *Veres Wire Industry Ltd.,* [1976] OLRB Rep. July 337, in which the Board found it appropriate to dismiss the application for employer support. In that case, the Board was unable to find on the evidence that the managerial employee in question was at all material times acting in a manner known to the affected employees to be prejudicial to the employer's interests, since the only evidence before it was that the majority of the employees in the bargaining unit would perceive that individual as their boss and that that individual played a key role in the applicant's efforts to persuade those employees to sign membership cards. By contrast, the uncontradicted evidence of Mr. Carver in the present case is that Paul Prelaz's involvement in assisting the employees came only after Paul Prelaz had "cancelled his relationship" with VanderWal, had left the employees without a supervisor, and Mr. Carver asked him if he knew anyone they could contact after the employees had themselves met and decided at the first rest stop that they wanted to contact a trade union to protect themselves.

96. The situation in the present case is also distinguishable from that in *Gibson Willoughby Limited,* [1967] OLRB Rep. July 347, in which the Board dismissed the application for employer support in circumstances where one of the respondent's superintendents took an aggressively active part in the organizing campaign while still employed as a member of management. His involvement was not, like Paul Prelaz's involvement in this case, limited to responding to an employee inquiry for assistance in contacting a union representative, but rather the superintendent in that case was found to be coercive in his efforts to have employees join the trade union. His coercive activities were further found to have been invited and condoned by the union's representative in that case such that the Board was persuaded that the provisions of what is now section 15 of the Act should apply.

97. The present case is instead, in my view, similar to that in *Consumers Distributing,* [1995] OLRB Rep March 250, in which the Board declined to entertain allegations in support of a request for dismissal under section 15 of the Act after finding that the allegations failed to disclose an arguable case for dismissal. The allegations before it in that case included that the organizing of employees in the bargaining unit had taken place with the assistance and support of a current and former manager and assistant manager for the announced purposes of getting back at the employer. In declining to entertain the allegations concerning the activities of the "managerial employees", the Board noted, at para 18, that, "...it has been the law for some time now that this provision [section 15 of the Act] will not apply unless the managerial employees can be said to be acting on behalf of management or, perhaps, can

reasonably have been perceived to have been doing so by employees whose support they were soliciting."

98. The circumstances before me are also, to some extent, similar to those in *Vic Murai Holdings Ltd.,* [1996] OLRB Rep. February 106, in which Ms. Hodder, an employee who had recently been promoted to the managerial position of Head Cashier was involved in the union's organizing drive relating to the employees of the store where she worked. In that case, Ms. Hodder had not only, like Paul Prelaz, attended a meeting with representatives of the trade union at which membership cards were signed, but had also contacted a number of employees who had not been present at the meeting in order to obtain more applications for membership. In finding that there had been no violation of what is now section 15 of the Act in that case, the Board noted that persons like Ms. Hodder, who hold a managerial position, and act on their own initiative against the employer's interests, do not in any way undermine the "necessary arm's length relationship" between the employer and the trade union required by the Act.

99. In view of my finding that Paul Prelaz, who had ended his relationship with VanderWal at the relevant time, was acting on his own initiative against the employer's interests when he contacted Mr. Zimmer on the employees' behalf and would in all the circumstances be seen to be so motivated, I am not persuaded that the overall context of his actions reveals the type of mischief to which section 15 of the Act is directed.

100. The remaining issue as it relates to Paul Prelaz's involvement is the Company's alternative argument that, even if his actions are not found to constitute a breach of section 15 of the Act, his involvement ought nonetheless to be considered when assessing the membership evidence in this case. In support of its argument, the Company relies on the decision in *V.H.L. Developments (Markham Place) Inc. and V.H.L. Developments Inc.,* 2010 CanLII 13057 (ON LRB) to suggest that a representation vote should be directed given that Paul Prelaz's involvement in the collection of membership cards raises concerns about their reliability as a reflection of the true wishes of employees. In *V.H.L. Developments (Markham Place) Inc. and V.H.L. Developments Inc.,* cited above, the Board found that the support of the managerial employee did not constitute a violation of section 15 of the Act, but that some of his remarks made to employees raised sufficient concern about the employees' true wishes that the Board found it appropriate to exercise its discretion under section 128.1(13)(b) of the Act to direct the taking of a representation vote.

101. The present certification application was however filed under section 8 of the Act. Under subsection 8(2) of the Act, the Board is *required* to direct the taking of a representation vote if it determines, based on the membership evidence filed, that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed. As such, in dealing with the present application, unlike that before the Board in *V.H.L. Developments (Markham Place) Inc. and V.H.L. Developments Inc.,* cited above, and subject only to the application of section 11 of the Act, the Board cannot, in any event, rely simply on the membership evidence filed to certify the trade union without first testing their wishes through a representation vote.

102. In the circumstances, having found that the participation of Paul Prelaz in the Union's organizing drive does not constitute "other support" within the meaning of section 15 of the Act, the remaining issue to be determined is whether the Union is entitled to remedial certification

under section 11 of the Act as a consequence of the unfair labour practices committed by the Company.

*(ii) Request for Remedial Certification*

103. Section 11 of the Act reads as follows:

> **Remedy if contravention by employer, etc.**
> **11.** (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,
>
> (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
>
> (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.
>
> **Same**
> (2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,
>
> (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
>
> (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
>
> (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.
>
> **Same**
> (3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).
>
> **Considerations**
> (4) On an application made under this section, the Board may consider,
>
> (a) the results of a previous representation vote; and
>
> (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

104. Since no representation vote contemplated under subsection 11(1)(a) of the Act has yet taken place in this case, section 11 of the Act would only apply at this stage if the

preconditions set out under subsection 11(1)(b) of the Act have been met; being, that, as a result of the Company's unfair labour practices, the Union is unable to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the Union at the time the application was filed.

105. In support of its position that that precondition has been met, counsel for the Union referred in argument to the fact that the Union had collected membership evidence on behalf of ten of the twelve original crew members who worked at the Chelmsford site until June 2nd. As such, the Union submitted that, if the Board finds that the Company terminated these people unlawfully, the Union could clearly have established the requisite forty percent membership support and that it failed to do so only as a result of the contraventions. In this regard, the Union also pointed out that the Form A-74 filed with the certification application discloses that the Union was able to file only two membership cards on behalf of employees in the proposed bargaining unit on June 9th and that it was unable to rely on six cards it had obtained from six individuals who had been unlawfully terminated on June 2nd. The Union was also unable to rely on two additional cards signed by two members of the crew who were allowed to return to work because those two individuals had asked the Union to destroy their cards after the unlawful terminations occurred.

106. Counsel for the Union also referred, by contrast, to the evidence of Jim VanderWal to the effect that there were nine employees of VanderWal working on the date of application and that five of these individuals normally work at the Company's shop. In addition, counsel noted Jim VanderWal's acknowledgement that it was out of the ordinary for any of those shop employees to be working on site. Counsel suggested that this evidence represents further confirmation that, but for the unlawful terminations, the earlier crew would have been at work and that the unlawful terminations resulted in the Union having only two cards upon which the Union could rely out of the nine people who were at work. Counsel for the Union also made reference to Mr. Zimmer's unsuccessful attempts to obtain further membership cards in the week of June 7th in support of the Union's position that any further organizing of VanderWal's crew was impossible after the terminations given that members of the new crew knew what had happened the week before. Counsel also noted that the evidence indicates that the work done by VanderWal's crew on the date of application was bargaining unit work.

107. In response to the Union's argument, counsel for the responding party confirmed that the responding party was not taking the position in reply that the work performed by the crew on the date of application date was not carpentry work (which position the Board understands had been the basis of its earlier objection to the applicant's proposed bargaining unit of carpenters' and carpenters' apprentices). Although counsel for the responding party also did not dispute that the Union had been unable to demonstrate forty percent or more membership support, she emphasized that the burden is on the applicant to establish that such failure was *as a result of* the unfair labour practices. She referred, in this connection, to the decision in *K.D. Clair Construction Ltd., K.D. Clair Western Inc.*, [2008] OLRB Rep. January/February 60. Counsel for the responding party also relied on the decision in *L&L Painting and Decorating Ltd.*, [2007] OLRB Rep. September/October 887 for the proposition that employee terminations do not necessarily trigger the application of section 11 of the Act. She further urged the Board to consider directing a representation vote given the unique circumstances of this case involving Paul Prelaz's involvement in the original collection of the membership evidence.

108. In view of my finding that the Company contravened the Act when it failed to return all members of the original crew to the Chelmsford site in the week of June 7th, the first issue to be determined in relation to the Union's request for relief under section 11 is whether, as a result of those contraventions, the Union "was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed" as contemplated under subsection 11(1)(b) of the Act.

109. It bears noting that the language used in subsection 11(1)(b) of the Act mirrors that used under subsection 8(2) of the Act, which latter provision requires the Board to direct the taking of a representation vote "[i]f the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed." Pursuant to subsection 8(3) of the Act, that determination "…is to be based only on the information provided in the application for certification and the accompanying information provided under subsection 7(13)." As such, pursuant to subsection 11(1)(b) of the Act, the Board may provide the trade union with the relief contemplated under section 11(2) of the Act where, *as a result of* the employer's contraventions of the Act, the trade union concerned is unable to demonstrate the appearance of membership support normally required for the Board to direct the taking of a representation vote.

110. In the present case, according to the information provided in the application for certification and the accompanying information provided under subsection 7(13), the Union filed two cards for employees in the proposed bargaining unit out of an estimated eleven employees who were at work on the date of application. The Union was consequently unable to demonstrate that 40 per cent or more of the individuals in the bargaining unit appeared to be members of the Union at the time the application was filed such that no representation vote could be directed pursuant to subsection 8(2) of the Act.

111. The evidence further establishes that, as a result of the Company's contraventions in this case, the remaining members of Paul Prelaz's crew were not at work on the date the certification application was filed and that two members of his crew who were working that day had asked the Union's representative to destroy their respective membership cards shortly after the unlawful terminations. The Union was consequently unable to rely on the additional eight membership cards it had collected and was therefore unable to demonstrate the necessary appearance of 40 per cent membership support required to obtain a representation vote under subsection 8(2) of the Act.

112. In addition, the evidence of Mr. Zimmer suggests that further organizing efforts by the Union of VanderWal's new crew were unsuccessful as a consequence of the unlawful terminations. Mr. Zimmer testified that two individuals, who identified themselves to him as VanderWal employees, refused to speak to him about joining the Union and that one of those two individuals referred in this connection to the terminations which had occurred the week before. While it was suggested that these individuals could have been members of Mr. Boudreau's crew, rather than members of VanderWal's crew, that seems unlikely given that they identified themselves as employees of VanderWal.

113. The situation in the present case is therefore significantly different from that in the decisions relied upon by the Company, in which the Board was unable to find a causal connection between the employer's unlawful terminations and the trade union's failure to obtain forty

percent membership support. In *L & L Painting and Decorating Ltd.*, cited above, the Board concluded that the employees concerned did not know of the unlawful termination during any relevant time and therefore that the unlawful termination would not have had a chilling affect on the union's organizing campaign. In *K.D. Clair Construction, K.D. Clair Western Inc.*, cited above, the Board was unable to find the necessary causal connection given that the union had not even attempted to obtain further membership support from the employees and the unlawful discharges had not come to the attention of any other employee in the bargaining unit prior to the filing of the application for certification. Similarly, in *Lecompte Electric Inc.*, [2008] OLRB Rep. March/April 234, the Board was unable to find the necessary nexus between the unfair labour practices committed by the employer and the union's failure to attain the forty per cent membership threshold given the absence of meaningful evidence of organizing activity by the union after the unfair labour practices had taken place.

114. By contrast, in the present case, the Union did make further attempts to sign up members of VanderWal's new crew, who were, according to Pat Senior, for the most part aware of the previous crew's union activities the week before. The causal connection has, in any event, been established in the present case irrespective of the Union's subsequent organizing efforts, since the number of unlawful terminations in the present case prevented the Union from establishing the requisite forty percent membership support using the membership cards it had already obtained. As noted above, given Jim VanderWal's expressed willingness on the morning of June 2nd to take any of the original crew members back to work at the Chelmsford site, it seems likely that all of them would otherwise have been at work on the date of application in addition to, or instead of, VanderWal's shop employees. In all the circumstances, the Board is satisfied that the contraventions of the Act in this case resulted in the Union's inability to demonstrate that forty per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the Union at the time the application was filed such that subsection 11(1) of the Act applies.

115. In these circumstances, and given that no representation vote has yet been taken, the Board may pursuant to subsection 11(2) of the Act: (1) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or (2) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.

116. The Board has generally found it appropriate to grant remedial certification in situations in which an employer has made threats to the continued job security of employees should the union become certified and also in situations where there has been a range of unlawful conduct that cumulatively has the effect of undermining the employees' ability to choose freely whether they want a trade union to represent them. This approach to remedial certification was adopted in *East Elgin Concrete Forming Limited*, 2007 CanLII 29221 (ON L.R.B.) in the context of the current section 11 of the Act and was described in *JAK Electrical Contractors Ltd.*, cited above, as follows:

> 130. As noted by the Board in the recent decision of *Maverick Mechanical Contractors Limited*, [1996] OLRB Rep. March/April 289, at paragraph 25, the Board has, generally, granted remedial certification in two broad categories of cases. Where an employer has made threats to the continued job security of its employees, conditional upon whether the union succeeded

> in its attempt to become certified, the Board has historically certified that union pursuant to section 11 of the Act (or its predecessors). Alternatively, the Board has certified a union automatically where a range of unlawful employer activities, none of which taken separately would lead to remedial certification, has the cumulative effect of undermining the confidence in the rule of law which a reasonable employee is presumed to have and which gives a reasonable employee the confidence to make a free choice.
>
> 131. In either of these two scenarios, it is well established that the remedy of "remedial certification" is not to be utilized by the Board in a punitive manner, but rather is a remedial option provided to the Board to ensure that an employer is not rewarded for its misconduct during a union organizing campaign. The legislature has recognized that it is inappropriate to permit an employer, though its own violations of the Act, to eliminate any chance that the true wishes of its employees could be reflected by way of a representation vote. Where the employer has acted in such a manner, the Act provides the Board with the power to automatically certify the union as the bargaining agent of the employees in the bargaining unit determined to be appropriate by the Board – whether the union would or would not otherwise have been successful in the absence of the unlawful conduct of the employer.

In either of these circumstances, the Board has generally found that the process of selecting a collective bargaining agent has been irreparably harmed such that remedial certification is required to ensure that the responding party is not able to benefit from its own misconduct.

117. In the present case, the evidence indicates that, shortly before the certification application was filed, Jim VanderWal not only threatened the job security of its employees, but terminated the employment of all members of the original crew when he treated them as having abandoned their employment, at least in part, because they had met with the Union. He then refused to allow most of them to return to the job site the following week and instead allowed only those who called him thereafter asking for their job back to return. He also required them to denounce any interest in the Union. As noted in *Finn Way General Contractors Inc.*, 2011 CanLII 28357 (ON LRB) at para 135, "…once the employer puts job security in issue, there is nothing the Board can do by way of remedy in the form of notices, declarations, reinstatement or other ancillary relief that will allow employees to enter a voter's booth free of the threat of job loss." In these circumstances, a representation vote would be meaningless given that those threats to their job security will follow the employees into the voting booth.

118. As such, regardless of whether the Board might in other circumstances have been inclined to direct the taking of a representation vote to test the true wishes of employees because of Paul Prelaz's involvement at the time the membership evidence was signed, the responding party's subsequent actions in unlawfully terminating the employment of the majority of its crew because of their union activity has rendered a representation vote meaningless. While the responding party urged the Board to direct the taking of a representation vote even if a contravention were established given Paul Prelaz's involvement, it did not suggest, nor can the Board imagine, what other remedy would be sufficient to counter the message sent to employees by the contraventions that support for the Union means job loss.

119. In all the circumstances of this case, the Board is satisfied that no remedy short of remedial certification, including the taking of a representation vote, is sufficient to counter the

effects of the Company's contraventions of the Act. The Board therefore finds that the applicant ought to be certified pursuant to section 11 of the Act.

## Disposition

120. For all these reasons, the Board declares that VanderWal breached the Act when it failed to return all members of Paul Prelaz's crew to the Chelmsford site in the week of June 7th with the result that only certain members of the original crew were at work on the June 9th, the date of the certification application. For the reasons outlined above, the responding party's contention that the certification application should be dismissed for employer support is hereby dismissed and the applicant's request for remedial certification under section 11 of the Act is granted.

121. A certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the United Brotherhood of Carpenters and Joiners of America and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America in respect of all carpenters and carpenters' apprentices in the employ of VanderWal Homes & Commercial Group in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

122. Further, pursuant to section 160(2) of the Act, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices in the employ of VanderWal Homes & Commercial Group in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

123. The employer is directed to post the "Notice to Employees" attached to this decision as "Appendix A" in the workplace where it will come to the attention of those employees who are affected by it and to keep that notice posted for a period of thirty (30) days.

124. Pursuant to parties' agreement, any remaining remedial issue in connection with the Union's unfair labour practice complaint is remitted back to them to resolve, failing which it can be referred to the Board for determination.

## Appendix "A"

## The Labour Relations Act, 1995

# *NOTICE TO EMPLOYEES*

## Posted by order of the Ontario Labour Relations Board

This notice has been posted in compliance with an Order of the Ontario Labour Relations Board issued after a hearing. The Board has determined after a hearing that VanderWal Homes & Commercial Group violated the *Labour Relations Act, 1995*. The Board concluded, as a result of these violations, that the true wishes of the employees could not be ascertained through the taking of a representation vote, and the Ontario Labour Relations Board certified the union as bargaining agent for the group of employees described as:

> all carpenters and carpenters' apprentices in the employ of VanderWal Homes & Commercial Group in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the responding party in all other sectors of the construction industry in within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman.

**The Board informs the employees of the following:**

All employees in Ontario have these rights which are protected by law:

> An employee has the right to join a trade union of his or her own choice and to participate in its lawful activities.
>
> An employee has the right to oppose a trade union, or subject to the union security clause in the collective agreement with his or her employer, refuse to join a trade union.
>
> An employee has the right not to be discriminated against or penalized by an employer or by a trade union because he or she is exercising rights under the *Labour Relations Act, 1995*, as amended.
>
> An employee has the right not to be penalized because he or she participated in a proceeding under the *Labour Relations Act, 1995*, as amended.
>
> It is unlawful for employees to be fired or in any way penalized for the exercise of these rights. If this happens, a complaint may be filed with the Ontario Labour Relations Board.

It is unlawful for anyone to use intimidation to compel someone else to become or refrain from becoming a member of a trade union, or to compel someone to refrain from exercising rights under the *Labour Relations Act, 1995*, as amended.

This is an official notice of the Board and must not be removed or defaced.
THIS NOTICE MUST REMAIN POSTED FOR 30 CONSECUTIVE DAYS.
Dated this 24th of November, 2011

# COURT PROCEEDINGS

**2904-09-U; 2905-09-FC; 3292-09-M (Court File No. 437/10, 559/10, 560/10) Mark Corner** –and- Ontario (Minister of Labour), International Union of Operating Engineers, Local 793, Rainbow Concrete Industries Limited & Ontario Labour Relations Board

**Final Offer Vote – First Contract Arbitration – Judicial Review – Natural Justice – Intervenor – One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed**

*Superior Court of Justice (Divisional Court), Chapnik, Hoy and Hourigan JJ.*, November 28, 2011

INTRODUCTION

[1] Over the course of two days, this Court heard three applications brought by two applicants, against one or more of the respondents, for judicial review. In general terms, these applications address a decision and a report of the Ontario Labour Relations Board ("the Board") and a decision by the Minister of Labour ("the Minister") made in respect of the negotiation of a first collective agreement ("the Agreement") between the parties. The Agreement, which is for a two-year term, was ultimately settled by arbitration and became effective on December 20, 2010, after these applications were commenced.

[2] The three applications form part of a lengthy and litigious history between the employer, Rainbow Concrete Industries Ltd. ("Rainbow" or "the employer") and the International Union of Operating Engineers, Local 793 ("the union").

[3] The union applied for certification in 2006. The certification and scope of the bargaining unit was eventually finalized in a decision of this Court, dated February 2, 2010, which affirmed the bargaining unit as determined by the Board. See Rainbow Concrete Industries Ltd. v. International Union of Operating Engineers, 2010 ONSC 723 (Div. Ct.).

[4] The union is the exclusive bargaining agent for a number of employees at the Sudbury location of Rainbow.

[5] As noted, there are two applicants challenging different aspects of the two decisions and the report pertaining to the process by which the present Agreement came to exist. Mark Corner ("Corner"), an employee, seeks judicial review of all three decisions under application 437/10. Rainbow seeks judicial review of the first decision under application 559/10, and the second decision and the Board's report under application 560/10.

THE DECISIONS AND REPORT OF THE BOARD

[6] The first decision under review is a decision by Vice-Chair Ian Anderson of the Board dated February 3, 2010, (reported at 2010 CanLII 4341) and the reconsideration decision in the same matter dated March 5, 2010, (reported at 2010 CanLII 11254), in which Vice-Chair Anderson allowed the union's application under s. 43(1) of the Labour Relations Act, 1995, S.O. 1995, c.1, Sched. A ("the Act") and ordered arbitration to settle the first collective Agreement between the parties.

[7] The second decision under review is a decision by the Minister of Labour ("the Minister") on February 4, 2010, to cancel a vote on the employer's last collective agreement offer, which had been scheduled for February 5, 2010, and to refer to the Board under s. 115 of the Act, the question of whether "the Minister of Labour, on the facts of this case [is] required to direct that a vote of employees be held pursuant to section 42 of [the Act]".

[8 ] The report at issue is that of Vice-Chair Anderson provided to the Minister in response to the s.115 reference, concerning whether a s. 42 final offer vote was required in the circumstances. After receiving submissions from the employer and the union, the Vice-Chair provided his report on May 3, 2010, in which he opined that in the present circumstances, where arbitration had been ordered, the vote was not required.

THE LEGISLATION

[9] The relevant sections of the Act are as follows:

> **Vote on employer's offer**
>
> **42.** (1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of the employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held and thereafter no further such request shall be made.
>
> ....
>
> **First agreement arbitration**
>
> **43.** (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

> **Duty of Board**
>
> (2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 17 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of,
>
> > (a) the refusal of the employer to recognize the bargaining authority of the trade union;
> >
> > (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
> >
> > (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
> >
> > (d) any other reason the Board considers relevant.
>
> . . . .
>
> **Reference of questions**
>
> **115.** (1) The Minister may refer to the Board any question which in his or her opinion relates to the exercise of his or her powers under this Act and the Board shall report its decision on the question.

## BACKGROUND

### The First Decision - s. 43(1) and (2)

#### (a) Intervenor Status

[10] On the morning of the Board hearing held January 26, 2010, a group of Rainbow employees, including Mr. Corner, took a bus from Sudbury to the hearing in Toronto. They carried with them a petition with the names and signatures of 62 employees who, Mr. Corner claimed, did not want the union to represent them any longer.

[11] At the commencement of the hearing, they requested that they be allowed to speak. The Vice-Chair denied this request because the employees were neither a party nor intervenors. He instructed them that they would need to file an application to intervene, which they proceeded to do. The application to intervene was served on Rainbow by fax to its Sudbury offices at 2pm that afternoon and filed with the Board. However, the employees returned to Sudbury before the hearing ended, without trying to return to the hearing after filing their intervention application, apparently because their bus driver had to do so to comply with "hours of work laws".

[12] The evidence indicated that Mr. Corner knew about the hearing well in advance and did not file any intervention application until the day of the hearing. Mr. Corner attended a union meeting on January 18, 2010, where the s. 43(1) application was discussed. This was more than a week before the hearing. However, the union did not learn that the employees intended to

attend the hearing until the day before, when the employer informed the union of this fact by email.

**[13]** Notwithstanding that the application to intervene was filed, it was never adjudicated. It is unclear whether it could have been processed before the end of the hearing, because it was served (and presumably filed) at 2pm and Mr. Corner and his colleagues left shortly thereafter. The hearing lasted only one day.

### (b) The Preliminary Issues

[14] The Board certified the union as bargaining agent on March 30, 2009, approximately three years after the union had applied for certification. Negotiations toward the creation of a first collective agreement took place between June and December of 2009, with the parties meeting eleven times, sometimes with the assistance of a conciliation officer.

[15] Vice-Chair Anderson found that by the final meeting on December 23, 2009, the union had decided to file its application under s. 43(1) of the Act, requesting that the first agreement be settled through arbitration.

[16] Prior to the hearing before the Vice-Chair, the parties filed detailed submissions. Of particular note is that the employer, in its submissions prior to the hearing, gave notice that it intended to bring a preliminary motion to dismiss the s. 43(1) application for failure to state a prima facie case.

[17] On January 18, 2010, the employer and union met with a Labour Relations Officer ("LRO") from the Board. The parties agreed to a process of procedure for the hearing on January 26, 2010; in particular, the employer would proceed first with its preliminary matters, particularly as concerned the alleged failure to plead a prima facie case, after which, if the application proceeded, the union and employer would call evidence in that order.

[18] In a decision dated January 19, 2010, Vice-Chair Anderson ordered the employer to provide "notice and particulars of any preliminary motions that it seeks to make."

[19] The employer responded with a letter of particulars dated January 22, 2010, regarding the orders it sought. Vice-Chair Anderson found that the particulars the employer provided in this letter were largely duplications of the employer's previous submissions and not relevant to the s. 43(1) application. Rather, they were primarily relevant to the union's application under s. 96 alleging certain unfair labour practices, which was being heard together with the s. 43(1) application.

[20] On January 25, 2010, the day before the hearing, the union responded to the letter of particulars, asking that the preliminary motions be dismissed summarily by the Vice-Chair. In particular, it requested that "the Board summarily dismiss the Responding Party's preliminary motion without recourse to oral argument as they fail to provide pleadings and particulars justifying the orders sought", in contravention of the Board's order to provide notice and particulars. Furthermore, the union submitted that,

> ... it is clear that the Responding Party is raising frivolous and legally unsupported preliminary motions in an effort to frustrate the resolution of

> these Applications in a timely manner. The Board, as the master of its own processes, should exercise its discretion and dismiss the Responding Party's preliminary motion forthwith and proceed directly to the merits of the Applications when the hearing commences on January 26, 2010.

(c) The s. 42 vote application

[21] On the same day, January 25, 2010, the employer filed an application with the Minister of Labour for a vote by bargaining unit employees on its final collective agreement offer as per s. 42 of the Act. The employer's proposed agreement was for a term ending in April, 2010. The Minister granted this application, and a vote was eventually scheduled for February 5, 2010. The timing of this application is important, in that the employer and Mr. Corner argue that once the vote is scheduled, the Minister is without jurisdiction to cancel the vote even if the s. 43(1) application, to be heard the next day, was granted.

(d) The hearing

[22] On January 26, 2010, the hearing commenced. Vice-Chair Anderson informed the parties that, notwithstanding the arrangement reached on January 18, 2010, they should proceed directly to argue the merits of the s. 43(1) application, rather than arguing the preliminary objections separately. It appears that Vice-Chair Anderson had prepared a direction for the parties on this point, dated January 22, 2010; however, the parties never received this direction.

[23] In his reasons on the procedural question, Vice-Chair Anderson noted that s. 43(2) directed him to consider and make his decision within 30 days of receiving the application, and that he was not bound by the parties' agreement on procedure.

[24] Importantly, Vice-Chair Anderson pointed out that the standard under s. 43(2) was that the applicant union had to show that it appeared that at least one of the threshold requirements under s. 43(2) "appears" to have been met. Board jurisprudence under s. 98(3), for instance, indicates that determining what "appears" to be the case may not require formal findings of fact.

[25] Moreover, the Vice-Chair held that, based on the materials filed, there appeared to be "few, if any, material facts in dispute", such that he directed the parties to argue the case on the basis of the employer's version of the facts, as stated in its pleadings and documents. In other words, any factual differences were resolved in favour of the employer. This alleviated the need to assess whether formal findings of fact were required, or whether the s. 98(3) jurisprudence applied concerning whether one or more of the criteria "appeared" to have been met.

[26] The employer took issue with this proposed procedure and wished to argue preliminary matters only. However, it does not appear that the employer disputed that its version of facts would be sufficient evidence to dispose of the matter. The hearing proceeded as the Vice-Chair directed, and the employer did not request leave to file any additional submissions or cases during or after the hearing.

[27] As noted above, Rainbow had previously applied for judicial review opposing the certification order. The decision of this Court in that matter was released on February 2, 2010, dismissing the application and affirming the Board's certification order.

[28] The next day, February 3, 2010, the union wrote to Vice-Chair Anderson (copying counsel for the employer) and asked him to provide a "bottom-line" ruling on its application for arbitration because of the pending s. 42 vote on February 5, 2010. The union's position was that if the application was granted, it would render the vote moot, and so, if possible, it was best to resolve the application first. Later that day, the Vice-Chair released the reasons for the first decision under review.

[29] Vice-Chair Anderson found that it was clear on the facts as they were presented in the employer's pleadings, that bargaining appeared to have been unsuccessful and, in particular, that the reason for this was the conduct of the employer as contemplated in ss. 43(2) (a)-(c), above. Therefore, the statutory conditions for ordering first agreement arbitration were met.

[30] The Board gave no notice of its decision to Mr. Corner or any other employees personally, and it appears that neither party requested that the Board do so.

*The Second Decision - s. 42 and the last offer vote*

[31] On the same day, February 3, 2010, the union wrote to the Minister informing him that the s. 43(1) application had been granted, and requesting that the vote be cancelled as a result. Notwithstanding the employer's objections, the Minister cancelled the vote on February 4, 2010. However, the Minister also referred to the Board the question of whether a vote was required in the circumstances.

[32] Upon learning that the Minister had cancelled the vote and referred the question to the Board, Mr. Corner attempted to send submissions to the Minister on this point, requesting that the vote go ahead as planned. However, those submissions were dated February 6, 2010, which is the day after the vote was to take place, and two days after the Minister cancelled the vote. As such, the Minister did not have access to those submissions when making his decision to cancel the vote and refer the question to the Board.

[33] On February 23, 2010, the employer filed a request for reconsideration of the February 3, 2010, decision granting first agreement arbitration under s. 43. At the reconsideration hearing, the employer argued that Vice-Chair Anderson should recuse himself for reasons of personal bias. The union points out that this was never raised until the reconsideration application, and was not raised at the January 26, 2010, hearing. Nonetheless, the employer argues in this application that the Vice-Chair should have recused himself from the January 26, 2010, hearing as well.

*The report - the s. 115 reference*

[34] Both parties filed submissions on the question of whether a vote under s. 42 could take place after a s. 43(1) application had been granted. The employer conceded that after granting a s. 43(1) application, it was no longer possible for either a strike or a lockout to occur. All parties agreed that the potential for a strike or lockout was a precondition to ordering a s. 42 vote. However, the employer took the position that once a vote is ordered, the Minister does not have the jurisdiction or the authority to cancel the vote. Vice-Chair Anderson rejected this position and found that the Minister was not required to order a vote on the given facts.

[35] Because Mr. Corner did not have intervenor status, he was not given notice of the s. 115 reference. However, he became aware of the deadline and drafted submissions, which he never actually sent to the Board despite his belief that they had been submitted.

## JURISDICTION

[36] The Court has jurisdiction to hear applications for judicial review of decisions by the Board and the Minister under ss. 2 and 6 of the Judicial Review Procedure Act, R.S.O. 1990, c. J.1. Pursuant to those provisions, the Divisional Court has jurisdiction to grant any relief that an applicant would be entitled to in: (1) proceedings by way of an application for an order in the nature of mandamus, prohibition or certiorari, or (2) proceedings by way of an action for a declaration or for an injunction or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

[37] The applicants requested various remedies in the nature of writs of mandamus, prohibition and certiorari, in relation to the Board's and the Minister's exercise of their respective powers under the Act. The parties raise no contentious issues concerning the Court's jurisdiction.

## STANDARD OF REVIEW

[38] The parties agree in general on the applicable principles governing the standard of review, as articulated by the Supreme Court of Canada in Dunsmuir v. New Brunswick, 2008 SCC 9, particular at paras. 62-64:

> In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.
>
> ...
>
> The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

[39] The various parties disagree, however, as to which standard applies to the actions of the Board and the Minister. To summarize, Mr. Corner argued that the matter of intervenor status and the employees' right to be heard is a matter of jurisdiction, subject to a correctness standard, while the respondents view this as a question of procedural fairness or natural justice, which is not a matter of substantive review. See Ontario (Commissioner, Provincial Police) v. MacDonald, 2009 ONCA 805, at para. 37.

[40] If the respondents are correct, then it is a question of the content of the duty of fairness. The test for this is set out in Baker v. Canada (Minister of Citizenship and Immigration), [1999]

2 S.C.R. 817, at paras. 23-28, which involves a consideration of five factors: the nature of the decision, the legislative scheme, the importance of the decision to the affected individual, the legitimate expectations of the person challenging the decision and the deference accorded to the decision-making body.

[41] With respect to reasonable apprehension of bias, the court must consider what an "informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude" concerning whether it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide the matter fairly. See Committee for Justice and Liberty v. Canada (National Energy Board), [1978] 1 S.C.R. 369, at 394.

[42] In reviewing the merits of the s. 43(1) application, the parties agree that the applicable standard of review is reasonableness, given that the Board is subject to a strong privative clause and has a high level of expertise in labour relations matters.

[43] In regard to the cancellation of the vote by the Minister, Mr. Corner and the employer contend this too is a jurisdictional issue raising the question of whether the Minister exceeded his authority under s. 42 of the Act, and therefore, the applicable standard is correctness. The union and the Minister argue that the applicable standard of review is reasonableness. They do not characterize the issue as one of jurisdiction.

[44] Both applicants challenge the report itself Mr. Corner argues that the Vice-Chair's procedure breached his rights in that he was not given an opportunity to participate in the s. 115 reference. Rainbow argues two main points concerning the report: first, that the Vice-Chair should have recused himself, and his failure to do so resulted in a reasonable apprehension of bias; and (2) that, on the merits, the May 3, 2010 decision was unreasonable. Rainbow roots its argument in the report itself, allegations of bias, the issue of fairness, and the policy issues behind the making a report to the Minister by the Vice-Chair on a s. 115 reference.

[45] The union argues that the report to the Minister, being an opinion only, is not subject to review; but if it is, then the standard of review is reasonableness. The union argued that reasonableness applies because this was an interpretation by the Board of its 'home statute' and not a question of true vires. If the question is jurisdictional, on the other hand, then the union agrees the standard of review would be correctness.

## ANALYSIS

### *The First Decision*

#### (a) Intervention by Corner

[46] Clearly, the Vice-Chair did not respond to Mr. Corner's intervention application or permit him to intervene. Since Mr. Corner would not receive notice and a chance to make submissions without intervenor status, the main issue is the failure to adjudicate the intervention application.

[47] In effect, Mr. Corner is alleging a denial of procedural fairness or natural justice. Thus, the question becomes whether the applicable duty of fairness has been met. As previously

noted, the test for determining the content of the duty of fairness lies in the five Baker factors, cited above.

[48] While Mr. Corner does not directly address the Baker factors, he enunciates several factors in arguing that his rights were breached. First, he distinguishes this situation from one in which the Board has considered but denied an application, because "[d]etermining the parties to a matter is material to the Board's ability give the issues in dispute a full and fair hearing". Second, he argues that, notwithstanding whether the application would have been granted, he was entitled to more than a "pre-emptory brush off". Third, he argued that fairness required that he and his colleagues be allowed to make submissions because (i) they were adverse in interest to the union and (ii) they objected to "false allegations" by the union in the two applications which, he argues, the employer could not have raised on their behalf. As such, their position would not have been represented unless they could intervene.

[49] The jurisprudence in this area suggests rare exceptions in which employees are granted intervenor status, specifically where the subject of the hearing is the status or right of an employee distinct from that of the union. For example, in termination and decertification applications, the Board's rules require notice to employees and contemplate their right, as employees, to make submissions. This is because the union and the employees are potentially adverse in interest and the status of the affected employees is at issue. In an application to set the terms of a collective agreement through arbitration, the proper parties are the employer and the union.

[50] The Courts have always shown deference to the Board with respect to procedural matters and the determination of the appropriate procedure for the expeditious adjudication of disputes. This is sometimes referred to as recognizing that the Board, like other administrative tribunals, is the "master of its own procedure". See e.g. International Woodworkers of America, Local 269 v. Consolidated-Bathurst Packaging Ltd., [1990] 1 S.C.R. 282 at pp. 307, 338; Industrial Wood & allied workers of Canada local 2693 v. Domtar Inc., 2002 CanLII 25708 (Div. Ct.), at para. 11, ("[a]n administrative tribunal is the master of its own procedure, and its exercise of that jurisdiction in the course of a proceeding should not be lightly interfered with."); Rapid Refrigeration Manufacturing Co. v. Huang, [2002] O.J. No. 2093 (Div. Ct.), at para. 3.

[51] The duty of fairness would include the right for all interested parties to make submissions on the issues and due consideration of those submissions but, in our view, would not include the right to also participate orally in the hearing, particularly in the absence of a timely intervention application from an appropriate party. In this case, the request to intervene was filed late in the day, near the conclusion of a one-day hearing and after the time for making submissions had passed.

[52] In any event, this intervention application was clearly inappropriate in light of the nature of the application. In context of the first Baker factor, the nature of the decision, and the fifth Baker factor, the reasonable expectation of the parties, this was not an appropriate circumstance for intervention. Here, the nature of the decision to be made was whether or not to settle the collective agreement between the employer and the union through first contract arbitration, concerning which the two parties, the employer and the union, were adverse in interest. And given the adversity between the employer and union, and the fact that the application sought to settle matters between them, the only reasonable expectation of all those involved would be that

the application would be determined following a hearing between the parties to any eventual collective agreement, that being the union and the employer. Indeed, contrary to the exceptional case such as a decertification application, in a case such as this, the Board's rules of procedure do not explicitly contemplate or make provision for intervention by employees.

[53] We find, in the particular circumstances of this case, that the Board did not breach its duty of fairness to the applicant, Mr. Corner.

> (b) Did the procedure adopted at the January 26, 2010, hearing breach the employer's rights?

[54] The concerns raised by the employer are that, among other things, the Vice-Chair changed the procedure to be used in the hearing without notice (as his directive was never delivered to the parties), in violation of the employer's reasonable expectations that the Board would adhere to the parties' agreed procedure. The employer highlights the fact that a representative of the Board, the LRO, was involved in settling on this procedure, and argues that the change in procedure affected the quality of the evidence received.

[55] The parties agreed that the Baker factors determine the content of the duty of fairness in this situation.

[56] In that regard, the employer argued that a significant duty of fairness attaches to s. 43(1) applications before the Board. Even though the Board is the master of its own procedure, the adversarial nature of the dispute, the reasonable expectations of the parties and the nature of the statutory scheme, particularly the requirement under s. 110(16) of the Act that the "Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions", requires a high level of procedural fairness.

[57] According to the employer, the Board breached its duty of fairness in not entertaining its preliminary motion to dismiss the union's application for not having pled a prima facie case, and in not permitting it to introduce evidence and cross-examine opposing witnesses.

[58] Though the Vice-Chair did not entertain the motion, the procedure he adopted was premised upon the fact that he resolved all factual differences in favour of the employer based on its pleadings and other documents filed.

[59] In adopting this procedure, he made the observation that s. 43(2) creates a reasonable expectation on the part of the parties, and a duty on the part of the Board, to resolve applications for first agreement arbitration in an expeditious fashion. Indeed, pursuant to that section, applications are to be resolved within thirty days.

[60] The Vice-Chair explained his reasoning on this point at paras. 6-9 of his reasons:

> First, section 43 contemplates the expeditious resolution of first contract arbitration applications. Indeed, section 43(2) directs the Board to "consider and make its decision on an application under subsection (1) within 30 days of receiving the application". Consistent with this expeditious resolution of such applications, the determination which the Board is called upon to make under section 43(2) is whether it "appears" that at least one of the threshold conditions

> for the granting of such an application have been made out. I note that this is the same as the determination which the Board is called upon to make under section 98(3) with respect to the request for certain interim orders. As the Board's jurisprudence has made clear, in determining whether or not threshold conditions under that section "appear" to have been met, the Board is not making factual determinations: see, for example, Patrolman Security Services Inc., [2005] OLRB Rep. Sept./Oct. 818 and K-2 Electrical Contracting Ltd., [2006] OLRB Rep. May/June 375. It may be that a similar approach should be applied to determinations under section 43.
>
> Second, in any event my review of the materials filed by the parties suggested that there would be few, if any, material facts in dispute. I note in this respect that in their submissions during the hearing itself, both counsel recognized this to be the case. Further, as the parties were directed to argue the case on the basis of the *responding party's* pleadings and documents, any factual differences were resolved in favour of the responding party. Accordingly, it is not necessary in this case to decide whether a determination under section 43(2) may be made on the same basis as a determination under section 98(3).
>
> ...
>
> ... the Board is not bound by agreements of parties. The agreement reached by the parties in this instance would not have resulted in an expeditious hearing of the matter and thus was not consistent with the statutory direction contained in section 43(2). Accordingly, the Board did not give effect to this agreement. [emphasis in original].

[61] The s. 43 test only requires an appearance that the conditions set out in section are met. The Vice-Chair gave cogent reasons as to why it appeared to him that the process of collective bargaining had been unsuccessful. He accepted the employer's version of any disputed facts, alleviating the need for viva voce evidence, and proceeded with the hearing in an expeditious fashion, as he was entitled and mandated to do.

[62] We see no lack of fairness in the Board proceeding as it did.

### (c) The Vice-Chair's refusal to recuse himself

[63] The employer contends that the Vice-Chair should have recused himself from the s. 43(1) application and/or the application for reconsideration of his February 3, 2010 decision.

[64] In sum, the employer alleges that the Vice-Chair's findings would "directly undermine or validate his own decisions" and all related decisions, including the judicial review of the certification order. Rainbow also alleges that the Vice-Chair released his decision on February 3, 2010, as a result of urgent communication from the union, without giving the applicant the right to respond; and that the timing of its release was an attempt to prevent the vote. In the words of the employer, "[t]he result of the decision by the Board ... was an attempt to thwart the legitimate expressions of the democratic will of the employees of the Applicant, by attempting to block the vote under s. 42."

[65] We do not accept these arguments. As noted by the union, the Board often assigns numerous related files to the same adjudicator. The reasons for assigning related files to the

same adjudicator are obvious. The mere fact that an adjudicator has determined other issues between parties does not make it more likely than not that he would not decide the matter fairly. As for the timing of the release of his decision, the hearing was held on January 26, 2010, this Court's ruling on the certification judicial review application was released on February 2, 2010, and the union's request for a "bottom-line" decision came the following day.

[66] The Vice-Chair was presumably attempting to release his decision within the 30 day period provided for in s. 43, which, we understand, the parties had agreed would run from January 4, 2010, when the employer says it actually received the application. Moreover, it would be entirely reasonable for the Vice-Chair to wait until the Divisional Court affirmed the certification before releasing a decision that might grant first contract arbitration, if this was indeed what he did. Though the union requested a "bottom-line" decision, the Vice-Chair's February 3, 2010, decision clearly was not written as a result of this request, given its detail and length. There is no evidence that the actual reasons of the Vice-Chair were influenced in any way by the union's request, or that the Vice-Chair would likely not have decided the issue fairly.

[67] This ground must also fail.

(d) The merits of the s. 43(1) decision

[68] Both the employer and the union agree that the standard of review on the merits of the s. 43(1) application is reasonableness and that s. 43(1) applications are governed by a two-part test.

[69] This test requires that the Board adjudicator find that it appears that (i) bargaining was unsuccessful, and (ii) the cause of why it was unsuccessful appears to be one or more of the reasons listed under ss. 43(2)(a)-(d).

[70] The test is a 'causal' one, where an enumerated reason having to do with the conduct of a party (in this case, the employer) must be the cause of the lack of bargaining success. The threshold for lack of success must not be so low that it discourages meaningful first contract negotiations. The Vice-Chair quoted from Metro Taxi Ltd. (c.o.b. as Capital Taxi), [1996] O.L.R.D. No. 3226, in reaching the following conclusions concerning the threshold for a lack of bargaining success:

> In Metro Taxi, the Board discussed the measure by which to determine whether the "process of collective bargaining has been unsuccessful". The Board noted the primacy of free collective bargaining, in recognition that an agreed to collective agreement is always preferable to an imposed one (paragraph 16). The Board stated that the threshold for "unsuccessful" collective agreement should not be set so low as to have a "narcotic", "corrosive" or "chilling" effect on the process of collective bargaining. It is noteworthy, in this respect, that the particular concerns that the Board expressed were that the parties not be "unwilling to compromise because at the end of the day, they assume that a third party will "split" the difference between the two" or that the parties would "take positions at the table designed primarily to enhance their positions before a Board of Arbitration". The Board concluded its discussion on this issue as follows:

> 77. As the jurisprudence suggests, there are no "mandatory" steps or numbers of negotiating sessions that parties must have before the Board may determine that collective bargaining has been unsuccessful. What must an applicant then show to discharge the onus of demonstrating that collective bargaining has been unsuccessful?
>
> 78. We would expect that at a minimum, an applicant should be able to show that it has attempted to seriously explore with the respondent all of the significant issues that exist between the parties. Of course, if the respondent has in fact rendered such attempts pointless, then that would be sufficient to determine that bargaining has been unsuccessful.
>
> Are further discussions possible and if so would they be helpful or fruitful? These are the types of questions that have been posed in the Board's jurisprudence. There is no specific number of bargaining sessions that parties must participate in before these questions can be answered. In some cases, many unproductive sessions may be indicative of a lack of success, but it is not necessarily so.

[71] In terms of the application of s. 43(2) to these facts, the employer argues that there was "no evidence" to support a number of the Vice-Chair's findings, including that there were unreasonable delays in commencing bargaining or scheduling negotiations, unreasonable conduct on the part of the employer, that its bargaining positions were uncompromising or unlawful, that the employer refused to recognize the union as bargaining agent or that the parties had not engaged in real and genuine efforts to conclude a collective agreement.

[72] According to the employer, it bargained in good faith throughout the process.

[73] However, the union reported a recurring pattern of the employer failing to respond to requests for documents and proposals in advance, which was evidence of unreasonable conduct and a lack of genuine effort to conclude an agreement. There was also evidence of extreme bargaining positions such as the controversial, "Magna style" no-strike clause, which could serve as the basis for a finding that the employer acted unreasonably or presented uncompromising or unlawful positions. The employer admitted having changed its position on settled points. Moreover, there was clear evidence the employer attempted to bargain for terms that were less favourable than those currently in place for bargaining unit employees.

[74] This Court will not interfere with the Vice-Chair's findings as to the appearance of a lack of success in bargaining due to factors that were well-supported by the evidence The decision of the Vice-Chair on the s. 43(1) application amply meets the test of reasonableness.

### *The Second Decision*

#### (a) The Minister's authority to cancel the s. 42 vote

[75] Both Mr. Corner and the employer argue the Minister lacks jurisdiction or authority to cancel a vote once it has been properly scheduled. Indeed, the language used in s. 42 is mandatory in that the Minister "shall" order the last offer vote when requested, except in the construction industry, where the Minister "may" do so. The parties are not in the construction industry. Mr. Corner and the employer submit that once the vote is called, the Minister is functus officio.

[76] Moreover, according to Mr. Corner, the right to a s. 42 vote on the employer's final offer vests in the employees, once called.

[77] The union also takes the position that the authority of the Minister is grounded in the proper interpretation of the wording of s. 42 of the Act, which is the Minister's 'home statute'. It argues that although the vote "shall" be ordered, this is contingent on certain conditions being in place, particularly the possibility of a "strike or lockout".

[78] However, the union submits, once a contract is either agreed upon or referred to arbitration under s. 43(1), the Minister has authority to cancel the vote, since a strike or lockout would be illegal in those circumstances. This would mean that the precondition of the possibility of a strike or a lockout would no longer be met. Moreover, the fact that s. 42 contains a notation that the vote shall be ordered "on the terms that [the Minister] considers necessary" underscores his authority to exercise judgment.

[79] We find that the question of whether the Minister has the power to cancel a s. 42 vote is a question of true vires, as distinct from the question of whether the Minister ought to do so in a particular case. In Dunsmuir at para. 59, the Court cautioned against characterizing issues as "jurisdictional" and adopted a narrow view of jurisdiction as being the question of whether the decision-maker had the power to make a particular decision. The question of whether the Minister could cancel the vote under any circumstances fits within even the narrowest view of jurisdiction. At this stage of the analysis, we ask only whether the Minister can cancel a s. 42 vote, not whether it was appropriate to do so in this case.

[80] As to whether the Minister has jurisdiction to cancel a s. 42 vote, in our view, the position taken by Mr. Corner and the employer on this issue is untenable. Would the Minister, for example, have jurisdiction to cancel the scheduled vote after a collective agreement had been reached by voluntary bargaining? And what if he did not, and a contrary result were obtained as a result of the vote?

[81] This would, as noted by the Vice-Chair in the s. 115 reference, produce "absurd" results. It would also be contrary to the express policy purpose of the statute to encourage expeditious settlement of disputes. In our view, the rational way to read s. 42 in its entirety would be that the authority of the Minister to direct a vote by the employees on the employer's last contract offer continues to be on contingent on the statutory preconditions of a strike or lock-out being possible. This stipulation would apply until the vote is taken and would include the power to cancel the vote in circumstances such as these.

[82] The purpose of the provision was not to create a vested right of employees to vote for the sake of voting where it would not affect their interests in a fundamental way. The Minister did not exceed his authority in cancelling the vote after the Vice-Chair's decision to send the matter to arbitration.

[83] This ground too must fail.

### (b) The Minister's refusal to permit intervention

[84] Mr. Corner argues that since neither he nor his colleagues were given notice and an opportunity to make submissions, the Minister breached his duty of fairness to them in

cancelling the vote and referring the question back to the Board, without their input. It is noted, however, that Mr. Corner sent his submissions to the Minister two days after the Minister made his decision. In addition, the Act gives a certified union exclusive bargaining rights.

[85] In our view, the Minister has no duty or authority to deal with individual employees or to consult them on matters related to bargaining "unless and until a union is decertified" as the bargaining agent for a group of employees. Exclusivity of bargaining is a bedrock principle of Ontario's labour relations system. Section 45(1) of the Act deems all collective agreements to provide that the trade union that is party to the agreement is the exclusive bargaining agent for the employees to whom the agreement applies. Under the Act, only one trade union may represent a unit of employees at any one time, and there are limits on decertification and "union raids" to displace an incumbent union's position as exclusive bargaining agent. Exclusivity is also implicit in the logic of s. 74 of the Act, which impresses on the union a duty to represent bargaining unit members in good faith so long as the union remains the bargaining agent for those employees. This duty is the corollary to the exclusivity of bargaining: because the union is the exclusive bargaining agent for a group of employees, the union has a duty to represent those employees in good faith.

[86] The principle of exclusivity avoids situations where some employees attempt to circumvent the Union, thereby weakening its ability to represent them as a group. In any event, the employees have remedies under the Act against the Union if they have complaints about how they are being represented (particularly s. 74). The Minister had no duty to include them in the decision-making process.

### (c) The Minister's decision to cancel the vote and refer the question to the Board

[87] We have already dealt with the issue of the Minister's authority to cancel the vote. Was his decision to do so, in this case, reasonable? The legislature gives the power to control s. 42 votes directly to the Minister instead of the Board.

[88] It is well-settled law that the Minister ought to be afforded a high degree of deference when the legislature has specifically allocated a decision-making power to the Minister rather than to the courts. See C.U.P.E. v. Ontario (Minister of Labour), 2003 SCC 29, at paras. 152-157; Canada (Citizenship and Immigration) v. Khosa, 2009 SCC 12, at para. 25.

[89] This recognizes the Minister's considerable expertise in labour relations matters. The question of whether to cancel the vote in this case was a determination of mixed fact and law that fell within his area of expertise. Moreover, the purpose of the section is to minimize industrial conflict, which is a matter that is central to the discrete and special administrative regime regulated by the Act.

[90] In light of the directed settlement by arbitration under s. 43(1), it was, in our view, entirely reasonable for the Minister to exercise his discretion in the manner in which he did. Once the agreement was out of the parties' hands, it was also out of the hands of the employees. To give just one example, while bargaining unit members might normally vote to ratify a negotiated collective agreement, they do not vote to ratify an arbitrated collective agreement, as that would now be out of their hands and in the hands of a neutral, third party decision-maker. The purposes for which s. 42 were designed would be, as here, no longer relevant.

[91] Even if the Minister's choice to cancel the vote was incorrect in law, which we do not find it was, it was reasonable for him to do so in the within circumstances in light of the statutory purposes of s. 42 and the need to facilitate the conclusion of bargaining.

*The Report to the Minister*

(a) The Intervention

[92] Though Mr. Corner argued the standard of review is correctness, the other parties again took the position that the issue of whether the employees should have been given a right to intervene in the s. 115 reporting is one of procedural fairness. We agree with this latter submission.

[93] Mr. Corner takes the position that the Board's duty of fairness included an obligation to provide him and the other employees with notice and an opportunity to participate in the process.

[94] Clearly, the duty of fairness demands that interested parties be permitted to make submissions in writing. In this case, however, although Mr. Corner drafted submissions intending to file them with the Board, he failed to do so. Hence, even assuming Mr. Corner was a proper party, there was no direct denial of this right by the Board.

[95] That said, though Mr. Corner had previously expressed interest in being involved in the s. 43(1) application, neither the Board's rules nor the Act require that notice be given to individual employees either on the s. 115 reference or the s. 43(1) application. This too was a matter between the employer and the union in their bargaining role, that is, to establish and implement the processes by which the parties would reach an agreement. Similar considerations apply here as they do with respect to Mr. Corner's desire to intervene in the s. 43 application.

(b) Is the Board's report to the Minister reviewable?

[96] The issue here is that the Board itself did not make any decision except to render an opinion to the Minister pursuant to s. 115. The Board's report constitutes an advisory opinion only. It is the Minister, not the Board, that makes any decision whether to call or to cancel a vote.

[97] Laskin J.A. in Ex Parte Kitchener Food Market Ltd. (1966), 57 D.L.R. (2d) 521 at pp. 530-31, held that a similar report to the Minister was not reviewable because "it does not control in law any following action of the Minister" and "the Board's decision has no independent legal effect".

[98] We are of the view that the Board's opinion report is not reviewable.

[99] Assuming that we are incorrect and the Board's advice to the Minister pursuant to s. 115 is subject to judicial review, then the same standard of review that applied to the Minister's decision that he had jurisdiction to cancel the vote (correctness) would apply to the Vice-Chair's determination that the Minister had jurisdiction to do so. This follows because in order to find the reference reviewable, we would have to treat the reference as, in effect, the Minister's actual decision on whether or not he was required to call a vote in the circumstances.

Indirectly, this inquiry asks whether the Minister has jurisdiction to cancel a s. 42 vote, and therefore, it would be subject to the same standard of review as the Minister's own decision on February 3, 2010, to cancel the vote.

[100] The employer argues that the purpose of s. 42 can best be understood by reference to Bill 7, the Labour Relations and Employment Statute Law Amendment Act, 1995, S.O. 1995, c. 1 (partially repealed by the Labour Relations Statute Law Amendment Act, 2005, S.O. 2005, c. 15).

[101] Bill 7 implemented secret ballot voting for certification, decertification, ratification and final offer voting. The employer argued that the Board's advice "serves to deprive the employees of their democratic right to vote on matters that directly affect them", which they suggest is "a flagrant violation of the public policy of the province of Ontario". As well, since the requirements for a final offer vote were met when it was scheduled, the vote vests in the employees once it is scheduled. Moreover, the intent of Bill 7, as evidenced in Hansard, subsequent government publications and the case law, is to protect employee choice on matters affecting them, and the final offer vote had the potential to show the arbitrator what the parties would have agreed to were the employer's offer accepted.

[102] As noted above, the purpose of s. 42 is to reduce industrial conflict and to overcome an impasse in bargaining. In this case, however, the arbitration order effectively ended the impasse. Therefore, no labour relations purpose would have been served by holding the vote.

[103] The employer is correct that, through Bill 7, the intent of the legislature was to ensure that workers had a right to vote on "matters which directly affect them". However, after the s. 43(1) application was granted, the collective agreement terms were to be set at the arbitration and therefore, the employer's last offer would no longer affect the employees. Bill 7 says nothing as to whether it is consistent with "democratic principles" to vote after a s. 43(1) application has been granted.

[104] We do not agree that Bill 7 in any way indicates that the legislature intended final offer votes to go ahead after the Board orders first contract arbitration.

### (c) The allegation of bias.

[105] The employer alleges a reasonable apprehension of bias on the part of the Vice-Chair due to his failure to recuse himself from the s. 115 reference.

[106] In some situations, a recusal from a s. 115 reference that followed the Vice-Chair's own decision might well have been appropriate. However, in the circumstances here, the Minister did not know about the s. 43(1) application when he agreed to schedule the last offer vote and, most importantly, the Vice-Chair was not aware of the scheduled vote when he made his decision to order arbitration. The Vice-Chair only learned on the morning of February 3, 2010, that a s. 42 vote was to be held on February 5, 2010. As discussed above, while he released his decision later in the day on February 3, 2010, it is clear from the length and detail of the reasons that the Vice-Chair had already been made prior to the union's request for a "bottom-line" ruling. The decision clearly was not a bottom-line ruling. Therefore, the Vice-Chair's advice to the Minister on whether or not a vote had to be held would not have had any

impact on the validity of his s. 43 order in the given circumstances. His order was in no way premised on the pending vote, nor was he aware of the pending vote when he wrote his reasons.

[107] The Vice-Chair, in his report to the Minister, gave detailed and cogent reasons for his opinion, which directly responded to the issues raised and the relevant factual circumstances.

[108] We do not think in these particular circumstances that a reasonable, informed person would perceive an apprehension of bias on the Vice-Chair's part, in his failure to recuse himself from the s. 115 reference.

## CONCLUSION

[109] The employer and Mr. Corner submitted that the circumstances of this case raise important matters of democracy in the workplace. They argued that the process involving the Board and the Minister undermined the right of the employees to exercise their will independent from their union representatives, which the applicants allege is the right of individual employees under the Act.

[110] With respect, we disagree with this characterization of the course of events. All of the issues raised turned, for the most part, on their own specific factual circumstances and the applicable law.

[111] The timing of events in this case was in some ways unfortunate. For instance, the employer requested the final offer vote on January 25, 2010, one day before the s. 43 application was heard at the Board. The Minister sent notification of the vote after the s. 43 hearing occurred, but before the s. 43 decision was released. The decision of this Court as to certification was released on February 2, 2010. The very next day the union wrote to the Board asking for a "bottom-line" decision before the s. 42 vote, scheduled for February 5, 2010. Against the backdrop of the expeditious manner in which s. 43 applications are to be adjudicated and the receipt of reasons in the pending judicial review, the Vice-Chair released full reasons that, obviously, were not drafted in the short time on February 3, 2010, between the union's request for a "bottom-line" decision and the Vice-Chair's release of his reasons. The reasons were released only two days before the s. 42 vote was to take place. This left only a very small window of time for the Minister to consider whether the vote should go ahead, and to cancel it if he deemed this to be appropriate.

[112] Perhaps, as a matter of practice, it would be best for the parties to inform the Minister in advance of their pending adjudication in cases like these, and to inform the Board during a s. 43 application that a s. 42 vote has been requested, so as to ensure that the various administrative and adjudicative processes at play work in harmony rather than in discord. However, these facts do not disclose any basis for the Court to intervene.

[113] Finally, in passing, we note that the employer's last offer expired in April 2010, and given the arbitrated agreement currently in effect, there is, at this stage, no practical remedy.

[114] For all of the reasons stated above, this application is dismissed.

## COSTS

[115] The union requested approximately $27,000 to $30,000 ($8,000-$10,000 per application) in partial indemnity costs for the three applications. The applicants each requested $10,000 in costs, if successful. In our view, the amount sought by the union is somewhat high in that portions of the applications overlapped one against the other, and some costs were previously awarded to the union.

[116] Taking into account the criteria in Rule 57.01 of the Rules of Civil Procedure, R.R.O. 1990, reg. 194, and the reasonable expectation of the parties, we award the union the all-inclusive sum of $21,000, one-third or $7,000 as against the employee Corner and $14,000 against the employer, Rainbow. Neither the Minister nor the Board requested costs and we award them none.

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**2442-07-R; 2936-07-R (Court File No. 482/10)** Labourers International Union of North America –and- SNC-Lavalin Inc. and Ontario Labour Relations Board

**Certification – Construction Industry – Employer – Judicial Review – The union sought judicial review of a Board decision that dismissed the union's application for certification when the union identified the incorrect employer as responding party – The Court found that the Board's finding was reasonable: the Board did not allow labour relations reality to be trumped by commercial form nor eclipsed by employer intentions; the Board's speculation on who the actual employer might be was not a finding of fact; while a finding of who the employer was might have been useful to the union, there was no obligation on the Board to make such a finding – Finally, there was no denial of natural justice – Application for judicial review dismissed**

*Superior Court of Justice (Divisional Court), Brown R.S.J., Dambrot and Hoy JJ.*, November 14, 2011

**DAMBROT J.** (ORALLY)

[1] This is an application brought by the Labourers International Union of North America, Ontario Provincial District for judicial review of the decision of the Ontario Labour Relations Board, dated September 22, 2010, dismissing the Union's application for certification against SNC-Lavalin Group Inc. and SNC-Lavalin Power Ontario Inc. (collectively "SNC") and to have SNC declared a "related employer". In dismissing the application the Board found that SNC was not the employer of David Doucette and Lucien Desrochers, two construction labourers working on an SNC job site.

[2] In 2006, SNC entered into a contract with Ontario Power Generation Inc. to design and construct a new hydro electric generation station. In September, 2007, SNC contracted with 1041536 Limited, which was owned by David Witty, to provide construction management services at the project. Mr. Witty was the sole employee of his company. Shortly after his arrival, Mr. Witty had difficulties with the performance of the then project management group,

Louisbourg. Eventually SNC ended its contract with Louisbourg and, by the end of the day on October 30, 2007, Louisbourg was off the site.

[3] During Louisbourg's departure, Mr. Witty and Damien Kulasingham, a vice president of SNC, discussed how to ensure that the essential site service work, including maintaining the water pumps, would be carried out. Mr. Kulasingham explicitly told Mr. Witty that under no circumstances was he to hire labourers on behalf of SNC as SNC was not a signatory to a collective agreement, and the direct hiring of trades was not in the SNC business model.

[4] On October 30, Mr. Doucette told Mr. Witty that he and Mr. Desrochers, who had been working for Louisbourg, wanted to stay and continue to work. Mr. Witty told them that SNC would not hire them, but that he needed two people to watch the pumps. He entered into a "gentleman's agreement" with them to stay and look after the pump watch, and he would ensure that they got paid. If he could not get them hired by another contractor, he said that he would put them on his company's payroll. The two men began their pump watch duties that evening. They were both aware that they were not employed by SNC, and would not be paid by SNC.

[5] At the same time, Mr. Kulasingham negotiated with Vector to take over responsibility for the site services. Vector was a signatory of a collective agreement with the Union, and agreed to do anything that was needed including taking on the two labourers. This agreement was not communicated to Mr. Witty until November 10, 2007. Ultimately Vector paid the two labourers retroactive to October 30.

[6] The Union raises the following grounds of appeal. First, it says, the decision of the Board is unreasonable because:

(1) the Board's decision was made on the basis of irrelevant considerations and by ignoring relevant considerations;

(ii) the Board's determinations were contradicted by the party's positions and evidence; and

(iii) the Board deprived the Union of the opportunity to pursue rights under the *Labour Relations Act*.

In addition, the Union argues that:

(iv) the Board breached the principles of natural justice.

[7] There is no dispute that in relation to the Board's findings of fact raised in the first three grounds, the standard of review is reasonableness and that this Court owes deference to the Board, but with respect to the allegation of a breach of natural justice, there is no standard of review and no deference is owed to the Board.

[8] With respect to the first ground, the Union says that the Board allowed labour relations reality to be trumped by commercial form and to be eclipsed by employer intentions and employee perception. In particular, the Union says that because the Board found that Mr. Witty exercised fundamental control over the employment of the two labourers, it should have

concluded that SNC was the employer. It erred in avoiding that conclusion solely because of SNC's avowed intention not to be the employer, and the employees' understanding flowing from their knowledge of this intention.

[9] We are satisfied that the Board's decision about the identity of the employer is a decision on a matter that is at the heart of the Board's jurisdiction, falls well within the range of possible acceptable outcomes and meets the reasonableness standard. We are not entitled to interfere. In our view, this argument is really an effort to re-argue the merits of the case, which is not permissible.

[10] In any event, we are satisfied that the Board identified the correct factors (the so-called *York Condominium* factors) in making the decision, and did not err in its application of them. The relative significance of the various factors depends on the circumstances of the particular case, a question that falls squarely within the expertise of the Board. The Board did not find that SNC exercised fundamental control over the work of the two labourers. It found that Mr. Witty did, but that he was not exercising fundamental control on behalf of SNC. This finding is, in our view, reasonable on the evidence before the Board. We would not give effect to this ground of appeal.

[11] With respect to the second ground of appeal, the applicant says that having erroneously decided that SNC was not the employer, the Board raised the possibility, in the absence of evidence and contrary to the position of either party, that Witty's numbered company or some other entity may have been the employer. The applicant submits that it is unreasonable for a tribunal to make findings on the basis of "no" evidence. It says that it is even more unreasonable, and breaches the principles of natural justice, to make findings of fact that contradict the positions of the parties. This, says the Union, contributed to the ultimate conclusion that SNC was not the employer.

[12] There are several flaws in this argument. First and foremost, the Board's comment about the possibility that the numbered company or some other entity was the employer is not a finding of fact and does not invite the scrutiny the applicant asks us to apply to it. Furthermore, this argument is tautological. If the Board raised the possibility that the numbered company was the employer after it decided that SNC was not the employer, then the raising of this possibility could not logically have contributed to the conclusion that SNC was not the employer.

[13] In any event, the only necessary issue for the Board to decide was whether or not SNC was the employer. Once it decided that SNC was not the employer, it was not necessary for the Board to decide who the actual employer was. The mere raising of the possibility that an entity might have been the employer without any evidentiary foundation, and even contrary to the positions of the parties, could have had no impact on the decision. It could not render the Board's decision unreasonable. The fact is however, that there was some evidence lead in the hearing supporting the conclusion that either David Witty or his company was the employer. The Union was alive to this issue, as evidenced by its cross-examination of Mr. Witty some seven months before the Union presented its evidence. It had ample notice of this issue, and ample time to respond. Indeed, it make detailed submissions respecting this issue. We would not give effect to this ground of appeal.

[14] With respect to the third issue, the Union says that the failure of the Board to identify who the employer was deprived the Union of the ability to obtain certification of the true

employer. While a finding about who the employer was might have been useful to the applicant, there was no obligation on the Board to make one. Its failure to do so does not make the Board's decision unreasonable. The material issue was whether or not SNC was the employer. The Board's finding that SNC was not the employer was reasonable. There is no merit to this ground of appeal.

[15] With respect to the fourth issue, the applicant says that the Board violated the basic principle of natural justice that the parties are entitled to know the case to be met and to have a fair opportunity to respond. This occurred, it says, because the Board originally identified the issue to be determined as whether the employer was SNC or Vector, but ultimately decided only that the employer was not SNC and might have been some other entity. This argument is also without merit. To succeed in this proceeding, the applicant had to establish that SNC was the employer. The Union could never have been in doubt about this. While it might have helped SNC's case to succeed in establishing that the employer was Vector, neither party had to establish who the true employer was if it was not SNC, and neither party could have been in doubt about this. The Union knew precisely the case it had to meet. It claimed that SNC was the employer and SNC denied it. The Union failed to make its case.

[16] For all of these reasons, the application is dismissed.

**BROWN R.S.J.**

**COSTS**

[17] Costs fixed at $10,000.00, inclusive of disbursements and HST to be paid by the applicant to the respondent SNC.

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**1405-03-R (Court File No. 78/11)** SNC-Lavalin -and- United Brotherhood of Carpenters and OLRB

**Judicial Review – Related Employer – SNC Lavalin sought review of the reasonableness and adequacy of the Board's decision finding the applicant was the corporate vehicle used to carry on the construction and project management work previously carried on by two companies bound by a collective agreement many years prior – The Board had decided this case did not constitute an expansion of bargaining rights – The Board had also decided this was not a case where the Union had either abandoned its bargaining rights or unduly delayed in filing the application – The court held the Board's decision was reasonable: the nature of the work (industrial and commercial construction) is by its nature episodic, and discontinuous, and dependent on the award of contracts to the employer – Regarding the adequacy of the reasons given, the Court held the conclusions were reached in a logical fashion which permitted effective judicial review; the basis for the Board's decision was intelligible and the reasons were sufficient – Application dismissed**

*Superior Court of Justice (Divisional Court), Pardu, Harvison Young and Mulligan JJ.*, November 16, 2011

**PARDU J.**

[1] The Applicant challenges a discretionary decision of the Ontario Labour Relations Board which declared that corporations operating under common control constituted one employer for the purposes of the *Labour Relations Act*. There is no dispute that the statutory preconditions for the exercise of the discretion were met. The Applicant submits that the Board acted unreasonably in exercising its discretion in the way it did, and argues that the reasons of the Board were inadequate.

[2] Section 1(4) of the *Labour Relations Act* provides:

> Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate. [Emphasis added]

[3] There is no dispute that the decision as to the merits of the decision should be reviewed on the standard of reasonableness. This decision lies close to the core of the Board's expertise in dealing with labour relations, and rests upon the Board's assessment of the factual circumstances before it.

[4] SNC Services Ltd., "SERVICES" was established by a predecessor to SNC-Lavalin Inc. "SNC-LAVALIN" to perform project management work in Sarnia for Sun Oil, from 1976 to 1978. It voluntarily agreed to be bound by a province-wide collective agreement with the Respondent union. It was dissolved in 1985.

[5] SNC/FW Ltd., SNC/FW was a partnership between SERVICES AND Foster Wheeler. It was established in November 1976 to work in the petrochemical industry, and did project and construction management for the petrochemical industry in Sarnia, in particular for Suncor between 1980 and 1984. The partnership was wound down in the mid 1980's. SNC/FW also agreed to be bound by a province-wide collective agreement with the Respondent union. The partnership was in fact controlled by a predecessor to SNC-Lavalin Inc. which ultimately acquired all of the shares.

[6] SNC Hydrocarbon Projects Ltd., "HYDROCARBON" was established in 1990 to complete the work of SNC/FW. It was not a signatory to the collective agreement. Other than completing the work of SNC/FW, HYDROCARBON has not performed any significant project work in Ontario since 1990. In 1993, SNC-Lavalin acquired the assets of HYDROCARBON.

[7] SNC-Lavalin Inc. is a wholly owned subsidiary of SNC Lavalin Group Inc., "SNC-LAVALIN GROUP". In the period from 1985-1995, SNC-LAVALIN had no active operations in Otnario. In 1996 SNC-LAVALIN GROUP acquired Kilbourn Holdings Inc., which performed work in the petrochemical and mining sector, particularly in Sarnia. It continued operating under the name SNC-Lavalin Engineers and Constructors Inc. "ENGINEERS". Kilbourn Holdings Inc.

had not agreed to be bound by a province-wide collective agreement with the Respondent Union. It did not itself do field work, but in fact subcontracted construction work to contractors who employed unionized employees.

[8] The Applicant argues that the decision of the Board that ENGINEERS, SNC-LAVALIN, SERVICES, AND SNC/FW were one employer for the purposes of the *Labour Relations Act* was unreasonable for the following reasons:

1. The long hiatus between the time that SERVICES and SNC/FW stopped operating and the time SNC-LAVALIN GROUP acquired Kilbourn Holdings Inc.a nd the fact that SNC-LAVALIN carried on no active operations in Ontario for ten years in that interval. Under these circumstances, it could not be said that ENGINEERS was taking over work which would have been performed by unionized employees.

2. The effect of the decision was to transform a business not subject to a collective agreement, to one obligated by the terms of a province-wide collective agreement, thus expanding the bargaining rights enjoyed by the Union, rather than simply preserving existing rights.

[9] The factual context here is important. The nature of the work, industrial and commercial construction projects is by its nature episodic, and discontinuous, and dependent upon the award of contracts to the employer. Once parties are bound by the collective agreement in this sector, there is no bargaining of the terms of employment between a union and an individual employer. All are bound by a province-wide sector agreement for the particular trade in issue.

[10] The Board indicated at paragraph [54] of its decision, "the purpose of subsection 1(4) is to prevent the union's bargaining rights from being eroded, even inadvertently, from the creation or acquisition of another business entity to perform work without regard to the collective agreement obligations that bind the original company."

[11] The Board continued its analysis at pargraph [55],

> "[55] That is precisely what has occurred in this instance. Services and SNC/FW were bound to the applicant's Provincial ICI collective agreement. These entities both performed work in the petrochemical field that fell within the scope of that collective agreement. Eventually Services and SNC/FW ceases operations and disappeared into the SNC corporate structure. The ongoing work of SNC/FW was then transferred to Hydrocarbon (an entity that did not apparently join the SCA) and Hydrocarbon was eventually amalgamated into SNC-Lavalin Inc. Then, in 2003, a dispute arose over a project in the ICI sector that SNC-Lavalin was performing at Abitibi Falls. Finally, the evidence at the hearing is that Engineers & Constructors is the entity that would now perform any projects in the hydrocarbon or petrochemical field in Ontario, which is the work previously performed by Services and SNC/FW and falls within the scope of the applicant's Provincial ICI collective agreement. SNC-Lavalin In. and Engineers & Constructors have filled the vacuum created when Services and SNC/FW, two unionized companies, ceased operations in Ontario."

[12] Essentially the Board concluded the ENGINEERS was the corporate vehicle used by the SNC companies under common control to carry on the construction and project management work previously carried on by SERVICES and SNC/FW. The Board concluded that making the order sought by the union did not constitute an expansion of as opposed to preservation of existing bargaining righst. This was a conclusion reasonably open to it on the evidence. That Kilbourn Holdings Inc. had not previously had a unionized workforce was not a factor given decisive weight by the Board. Kilbourn did not engage tradesworkers. The SNC companies could have created a new corporation to do the same thing. That this was not a case of a company being created to siphon off work from an ongoing enterprise had little significance, given the episodic nature of the work.

[13] Similarly, on the issues of whether the delay should cause the Board to refuse to grant the declaration sought, and whether the Union had abandoned its bargaining rights, the Board concluded at paragraphs 37, 40 and 41,

> "[37] The evidence in this case is that there were no breaches of the collective agreement upon which the applicant failed to act between 1989 and 2003. Further, when the dispute over the Iroquois Falls work arose in 2003 the union took the appropriate steps to enforce its bargaining rights by first filing a grievance and then bringing this application when, in response to the grievance, SNC-Lavalin Inc. denied it was bound to the applicant's ICI agreement. Accordingly, this is not a situation where the evidence establishes that the union failed to enforce its bargaining rights for an unexplained period of time sufficient to constitute abandonment.
>
> ...
>
> [40] Furthermore, this is not a situation where the applicant failed to enforce its bargaining rights. After the disappearance of Services and SNC/FW a hiatus ensued during which no construction projects were apparently performed in Ontario by any SNC entity. Accordingly, there were no violations of the applicant's ICI collective agreement or disputes over these bargaining rights until 2003. There was no reason for the applicant to take steps to assert its bargaining rights or file this application until 2003 after SNC-Lavaiin Inc. denied it was bound to the Carpenters' ICI collective agreement.
>
> [41] The Board is therefore satisfied that this is not an appropriate case to find that the applicant has either abandoned its b irgaining rights or unduly delayed in filing this application."

[14] Again, these were factual conclusions well within the range of reasonable outcomes. In *Dunsmuir v. New Brunswick,* (2008) 291 D.L.R. (4th) 577 at p. 602, the Court explained what is meant by "reasonableness".

> "[47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquiries into the qualities that make a decision reasonable, referring both to the process of articulating the reasons,

> referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[15] Here the Board explained its decision in a transparent and intelligible fashion and the result falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law". It considered whether the employer would suffer prejudice.

[16] The Applicant also submits that there has been a failure of natural justice because the reasons are inadequate. Adequacy of reasons is assessed on a standard of correctness. In *Clifford v. Ontario (Attorney General)*, (2010) 98 O.R. (3d) 210, Goudge J.A. explained the approach to assessment of the adequacy of the reasons of an administrative tribunal at pp. [25]-[32],

> "[25] Where an applicant for judicial review argues that an administrative tribunal with a legal obligation to give reasons for its decision has failed to do so, how is the court to determine if this obligation has been complied with?
>
> [26] In the rate case where nothing is offered by the tribunal to support its decision, the question is readily answered in the negative. Where something is offered, the task is to determine whether, in the context of the particular case, this constitutes reasons sufficient to meet the tribunal's legal obligation.
>
> [27] In *Baker*, where the Supreme Court of Canada first explained that in certain circumstances the duty of procedural fairness requires reasons to be given, it also cautioned that although it has the final say, the reviewing court must use flexibility in determining what constitutes reasons sufficient to meet this obligation. As *Baker* stated in para. 44, this approach recognizes the varied day-to-day realities of administrative agencies and the many ways that procedural fairness can be achieved.
>
> [28] Important guidance is also provided by *R. v. R.E.M.* [2008] 3 S.C.R. 3, particularly paras. 15 to 35. Although a criminal case, the Supreme Court of Canada addresses the precise question of what in the context of a particular case constitutes reasons sufficient to meet the legal obligation to provide a written explanation for a decision. This is directly relevant to the case at bar.
>
> [29] *R.E.M.* emphasizes that where reasons are legally required, their sufficiency must be assessed functionally. In the context of administrative law, reasons must be sufficient to fulfill the purposes required of them, particularly to let the individual whose rights, privileges or interests are affected know why the decision was made and to permit effective judicial review. As *R.E.M.* held at para. 17, this is accomplished if the reasons, read in context, show why the tribunal decided as it did. The basis of the decision must be explained and this explanation must be logically linked to the decision made. This does not require that the tribunal refer to every piece of evidence or set out every finding or conclusion in the process of arriving at the decision. To paraphrase for the administrative law context what the court says in *R.E.M.* at para. 24, the "patch" taken by the tribunal to reach its decision must be clear from the reasons read in the context of the proceeding, but it is not necessary that the tribunal describe every landmark along the way.

> [30] *R.E.M.* also emphasizes that the assessment of whether reasons are sufficient to meet the legal obligation must pay careful attention to the circumstances of the particular case. That is, read in the context of the record and the live issues in the proceeding, the fundamental question is whether the reasons show that the tribunal grappled with the substance of the matter: see *R.E.M.* at para. 43.
>
> [31] In addition, in my view, it is important to differentiate the task of assessing the adequacy of reasons given by an administrative tribunal from the task of assessing the substantive decision made. A challenge on judicial review to the sufficiency of reasons is a challenge to an aspect of the procedure used by the tribunal. The court must assess the reasons from a functional perspective to see if the basis for the decision is intelligle.
>
> [32] This is to be distinguished from a challenge on judicial review to the outcome reached by the tribunal. That may require the court to examine not only the decision but the reasoning offered in support of it from a substantive perspective. Depending on the applicable standard of review, the court must determine whether the outcome and the reasoning supporting it are reasonable or correct. That is a very different task from assessing the sufficiency of the reasons in a functionally sense."

[17] Here there was no dispute that the statutory preconditions for the exercise of discretion were met. The Board explained why it did not find the employers' arguments about delay persuasive, and concluded that in light of all the circumstances it should exercise its discretion to make the order sought by the Union. It dealt with the mischief addressed by the statute and potential prejudice. The reasons explain why the Board came to the conclusions it did in a logical fashion which permits effective judicial review. The basis for the decision is intelligible and the reasons are sufficient.

[18] Accordingly, this Application is dismissed, with costs to the Respondent Union in the agreed upon amount of $5,000.00.

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JUNE 2011

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**3748-07-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ballygarven Homes Limited and/or, Ballygarven Building Corp. and/or, Ballygarven Homes (Markham) Limited and/or, Ballygarven Homes (Calvert) Ltd. and/or, Ballygarven Homes (Newmarket) Ltd. and/or, Ashford Estates Inc. (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of Ashford Estates Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**3783-07-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Circon Construction Corporation, Circon Design Build Corporation, Soledd Investments Ltd. (Respondent)

Unit: "all construction labourers in the employ of Circon Construction Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Circon Construction Corporation in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (11 employees in unit)

**1521-10-R**: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Rhude Drilling & Blasting Inc. (Respondent)

Unit: "all construction labourers in the employ of Rhude Drilling & Blasting Inc. in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1644-10-R**: International Union of Operating Engineers, Local 793 (Applicant) v. Iacobelli Construction Limited (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Iacobelli Construction Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Iacobelli Construction Limited in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**3811-10-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1168768 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical (Respondent)

Unit: "All journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers employed by the Responding Party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and in Board Areas 13 and 15 in the non-ICI sector of the construction industry, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in unit)

**3930-10-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1168768 Ontario Inc. and, 1702786 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical and ABC Electrical (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of 1702786 Ontario Inc., 1168768 Ontario Inc., 1750872 Ontario Inc., 1633676 Ontario Inc., 1727807 Ontario Inc. and 1503893 Ontario Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario save and except non-working foremen and persons above the rank of non-working foreman all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of 1702786 Ontario Inc., 1168768 Ontario Inc., 1750872 Ontario Inc., 1633676 Ontario Inc., 1727807 Ontario Inc. and 1503893 Ontario Inc. in all sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kilter, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

**4166-10-R**: International Brotherhood of Electrical Workers, Local 115 (Applicant) v. Farmcor Limited (Respondent)

Unit: "all other affiliated bargaining agents of the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario in respect of all electricians and electricians' apprentices, all lineman and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Farmcor Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all lineman and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Farmcor Limited, in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non- working foreman" (10 employees in unit)

**0405-11-R**: International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. Watt Worx Electrical Corp. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Watt Worx Electrical Corp. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Watt Worx Electrical Corp. in all sectors of the construction industry in the

City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, the County of Simcoe and the District Municipality of Muskoka, the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (23 employees in unit)

**0585-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Kiewit - Alarie, A Partnership (Respondent)

Unit: "all surveyors in the employ of Kiewit-Alarie, A Partnership in all sectors of the construction industry in the Townships of Kipling, Harmon, Hecla, Sanborn, McCausland, Acres, Bradley, Boyle, Mowbray, Howells, Cockshutt, and Emerson, save and except the industrial, commercial and institutional sector, and save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

**0617-11-R**: Brick and Allied Craft Union of Canada (Applicant) v. Bernardo Group Limited (Respondent)

Unit: "all marble, tile and terrazzo, cement masons and their helpers, their respective apprentices, improvers and working foremen in the employ of the Bernardo Group Limited in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, in all sectors of the construction industry, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

**0659-11-R:** Christian Labour Association of Canada (Applicant) v. Gilbon Services c.o.b. Mr. Electric (Respondent)

Unit: "all journeyman and apprentice electricians and all construction labourers in the employ of Gilbon Services Inc., c.o.b. Mr. Electric in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russel, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in unit)

**0730-11-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Albert Panaro c.o.b. as Able Painting & Decorating (Respondent)

Unit: "all painters and painters¿ apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of the responding party in all sectors of the construction industry other than the industrial, commercial and institutional sector, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the Regional Municipality of Durham, the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

**0757-11-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Dan Rajkovic c.o.b. as Dinamo Construction (Respondent)

Unit: "all painters and painters' apprentices in the employ of Dan Rajkovic c.o.b. as Dinamo Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Dan Rajkovic c.o.b. as Dinamo Construction in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0781-11-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. S D L Plumbing & Mechanical Ltd. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of S D L Plumbing & Mechanical Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of S D L Plumbing & Mechanical Ltd. in all sectors of the construction industry in the County of Wellington, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0788-11-R:** Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. Henry Heyink Construction Ltd. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors and all construction labourers in the employ of Henry Heyink Construction Ltd. in all sectors of the construction industry in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**0848-11-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Barrett Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters' and steamfitters' apprentices in the employ of Barrett Mechanical In. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters' and steamfitters' apprentices in the employ of Barrett Mechanical Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin; and the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

**0890-11-R:** Labourers' International Union of North America, Local 625 (Applicant) v. A.J. Silva Concrete Ltd. (Respondent)

Unit: "all construction labourers, carpenters and carpenters¿ apprentices in the employ of A.J. Silva Concrete Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0891-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bridge Tite Waterproofing & Sealing Ltd. and Bridge Tite Coatings Inc. and Bridge Tite Group (Respondent)

Unit: "all construction labourers in the employ of Bridge Tite Waterproofing & Sealing Ltd. and Bridge Tite Coatings Inc. and Bridge Tite Group in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0910-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Park Derochie Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Park Derochie Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Park Derochie Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

**0978-11-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 2123648 Ontario Ltd. o/a J.P. Painting (Respondent)

Unit: "all painters and painters' apprentices in the employ of 2123648 Ontario Ltd. o/a J.P. Painting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of 2123648 Ontario Ltd. o/a J.P. Painting in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non working foreman, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

**0998-11-R:** Brick and Allied Craft Union of Canada (Applicant) v. G. L. Masonry Contracting (London) Limited (Respondent)

Unit: "all bricklayers, bricklayers¿ apprentices, stonemasons and stonemasons¿ apprentices in the employ of G.L. Masonry Contracting (London) Limited in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non- working foreman" (3 employees in unit)

## Bargaining Agents Certified Subsequent to Vote

**0139-06-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Swift Railroad Contractors Corporation (Respondent)

Unit: "all employees of Swift Railroad Contractors Corporation in the Province of Ontario, save and except office and sales staff, estimators, supervisors and persons above the rank of supervisor." (13 employees in unit)

**1541-07-R**: International Union of Operating Engineers, Local 793 (Applicant) v. Clean Water Works Inc. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers, or similar equipment and those engaged in repairing and maintaining of same, and employees engaged as surveyors in the employ of Clean Water Works Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers, or similar equipment and those engaged in repairing and maintaining of same, and employees engaged as surveyors in the employ of Clean Water Works Inc. in all sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the County of Renfrew, and the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 3 |
| Number of persons who cast ballots | 2 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 1 |
| Number of ballots marked against applicant | 0 |

**4250-10-R**: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 461 (Applicant) v. Brock University (Respondent)

Unit: "all stagehands employed by Brock University in the Niagara Region and the City of Hamilton in the Province of Ontario, save and except supervisors and those above the rank of supervisor and those already covered by a pre-existing collective agreement" (6 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 16 |
| Number of persons who cast ballots | 10 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 6 |

**0018-11-R:** Teamsters Local Union No. 879 (Applicant) v. APD All Parts Delivery (Respondent)

Unit: "all dependant contractors employed by 2209334 Ontario Inc., dba APD All Parts Delivery in the City of London and the City of Dorchester, save and except supervisors and persons above the rank of supervisor, and route drivers" (25 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 34 |
| Number of persons who cast ballots | 32 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 30 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 16 |
| Number of ballots marked against applicant | 14 |
| Number of ballots segregated and not counted | 2 |

**0034-11-R:** The Ontario Secondary School Teachers' Federation, (OSSTF/FEESO) (Applicant) v. Algoma University (Respondent)

Unit: "all employees of Algoma University employed in the ESL Program, employed in the Algoma University Foundation, and employed as Academic Coordinators and Lab Coordinators, save and except the Algoma University Foundation Executive Director, Divisional Directors, persons above the rank of Divisional Director, and any employee for whom a trade union held bargaining rights on the date of application" (17 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 19 |
| Number of persons who cast ballots | 13 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 9 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 8 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 4 |

**0035-11-R**: Ontario Public Service Employees Union (Applicant) v. Connexion Family Health Team - l' Equipe de Sante Familiale Connexion (Respondent)

Unit: "all employees of Connexion Family Health Team - l' Equipe de Sante Familiale Connexion in the City of Ottawa save and except the Executive Director and the Manager of Corporate Services" (12 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 12 |
| Number of persons who cast ballots | 12 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 10 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 11 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 1 |

**0284-11-R**: Canadian Union of Public Employees (Applicant) v. ARAMARK Canada Limited (Respondent)

Unit: "all employees employed by ARAMARK Canada Limited employed at the Rouge Valley Health System in the Region of Durham, save and except supervisors and persons above the rank of supervisor" (14 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 14 |
| Number of persons who cast ballots | 13 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 13 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 9 |
| Number of ballots marked against applicant | 4 |
| Number of ballots segregated and not counted | 0 |

**0341-11-R:** United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union (United Steelworkers) (Applicant) v. Air Liquide Canada Inc. (Respondent)

Unit: "all employees of Air Liquide Canada Inc. in the City of Cornwall, save and except supervisors, those above the rank of supervisor and office and clerical employees" (7 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 19 |
| Number of persons who cast ballots | 19 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 7 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 11 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 18 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**0454-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Nor-Shore Ready Mix Concrete Products Limited (Respondent)

Unit: "all employees of Nor-Shore Ready Mix Concrete Products Limited engaged in the concrete manufacturing and distribution operations of the Company in the District of Thunder Bay, save and except supervisors, persons above the rank of supervisors and office staff" (15 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 17 |
| Number of persons who cast ballots | 15 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 15 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 15 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**0460-11-R**: Ontario Nurses' Association (Applicant) v. Caressant Care Nursing and Retirement Homes Limited The Maples Home for Seniors (Respondent)

Unit: "all registered nurses and nurses with a temporary certificate of registration employed by the Caressant Care Nursing and Retirement Homes Limited The Maples Home for Seniors, save and except Director of Nursing, persons above the rank of Director of Nursing, and employees in bargaining units for which any trade union held bargaining rights as of May 6, 2011" (11 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 11 |
| Number of persons who cast ballots | 8 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 8 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |

| | |
|---|---|
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 8 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**0551-11-R:** United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Days Inn Guelph (Respondent)

Unit: "all employees employed by Days Inn Guelph, located in the City of Guelph, Ontario, 785 Gordon Street, save and except Supervisors, all persons above the rank of Supervisor, sales agents, office staff, students employed during the school vacation period" (13 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 13 |
| Number of persons who cast ballots | 12 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 11 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 9 |
| Number of ballots marked against applicant | 2 |
| Number of ballots segregated and not counted | 1 |

**0560-11-R**: Communications, Energy and Paperworkers Union of Canada (Applicant) v. David B. Archer Co-operative, Inc. (Respondent)

Unit: "all employees of David B. Archer Co-operative, Inc. employed in the City of Toronto, save and except persons above the rank of Manager" (5 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 5 |
| Number of persons who cast ballots | 5 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**0596-11-R**: Service Employees International Union Local 1 Canada (Applicant) v. Giffen-Mack Funeral Home and Cremation Centre (Respondent)

Unit: "all employees of Giffen-Mack Funeral Home and Cremation Centre, 4115 Lawrence Avenue East, Toronto, ON are included save and except location managers, general managers persons above the ranking of managers and pre-arrangement councilors" (8 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 11 |
| Number of persons who cast ballots | 9 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 8 |

| | |
|---|---|
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 6 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 0 |

**0619-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. 118 Market Street GP Limited o/a Caroline Place Retirement Residence (Respondent)

Unit: "all employees of 118 Market Street GP Limited o/a Caroline Place Retirement Residence in the City of Hamilton, save and except supervisors and persons above the rank of supervisor and office and clerical" (19 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 20 |
| Number of persons who cast ballots | 16 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 15 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 14 |
| Number of ballots marked against applicant | 2 |
| Number of ballots segregated and not counted | 0 |

**0621-11-R**: Ontario Public Service Employees Union (Applicant) v. University Health Network (Respondent)

Unit: "all Pharmacy Technicians and Pharmacy Technician Candidates employed by University Health Network specifically at Toronto Western Hospital at its 399 Bathurst Street complex, Princess Margaret Hospital at its 610 University Avenue complex, Toronto General Hospital at its 200 Elizabeth Street complex in the City of Toronto, save and except senior technicians and persons above the rank of senior technicians, students in training, students employed during the summer vacation period, office and clerical employees, radio pharmacy technicians, and persons for whom any trade union held bargaining unit rights as of May 18, 2011" (113 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 111 |
| Number of persons who cast ballots | 94 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 74 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 13 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 7 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 67 |
| Number of ballots marked against applicant | 7 |
| Number of ballots segregated and not counted | 18 |

**0663-11-R:** Ontario Public Service Employees Union (Applicant) v. Frontenac Youth Services (Respondent)

Unit: "all employees of Frontenac Youth Services employed at Oshawa, Ontario, save and except Managers, Supervisors and persons above the rank of Managers and Supervisors, Senior Clinicians, the

Account/Administrator, the executive secretary, receptionist and persons covered by subsisting collective agreements" (46 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 46 |
| Number of persons who cast ballots | 16 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 16 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 15 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**0668-11-R:** International Association of Machinists and Aerospace Workers (Applicant) v. 1791949 Ontario Ltd. c.o.b. Airport Operations Support Services (Respondent)

Unit: "all Operational Support Representatives employed by 1791949 Ontario Ltd. c.o.b. Airport Operations Support Services at the Toronto Pearson International Airport save and except supervisors and persons above the rank of supervisor" (84 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 90 |
| Number of persons who cast ballots | 75 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 69 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 42 |
| Number of ballots marked against applicant | 27 |
| Number of ballots segregated and not counted | 6 |

**0676-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. European Quality Meats & Sausages (Respondent)

Unit: "all employees of European Quality Meats & Sausages employed in the City of Brampton, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (99 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 121 |
| Number of persons who cast ballots | 118 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 116 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 4 |
| Number of ballots marked in favour of applicant | 82 |
| Number of ballots marked against applicant | 30 |
| Number of ballots segregated and not counted | 2 |

**0679-11-R:** Workers United Canada Council (Applicant) v. Sleep Country Canada LP (Respondent)

Unit: "all employees of Sleep Country Canada LP, working in and out of the City of Ottawa, save and except co-ordinators, persons above the rank of co-ordinator, office, clerical staff, sales staff (including customer service representatives and inspectors)" (12 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 12 |
| Number of persons who cast ballots | 12 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 12 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 9 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 0 |

**0688-11-R:** Canadian Union of Public Employees (Applicant) v. Men's Withdrawal Management Centre, University Health Network (Respondent)

Unit: "all employees of Men's Withdrawal Management Centre, University Health Network, in the City of Toronto; save and except supervisors, persons above of the rank of supervisor and employees in bargaining units for which any trade union held bargaining rights as of May 26, 2011" (7 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 0 |
| Number of persons who cast ballots | 9 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 9 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 6 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 2 |

**0758-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. West Haldimand General Hospital (Respondent)

Unit: "all clerical employees employed by West Haldimand General Hospital in the City of Hagersville, Ontario, save and except supervisors, persons above the rank of supervisor, paramedical employees, business office employees, employees employed in a confidential capacity in relation to labour relations within the meaning of 1(3)(b) of the Act and employees for whom any trade union held bargaining rights as at May 31, 2011" (29 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 27 |
| Number of persons who cast ballots | 21 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 19 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 15 |

| | |
|---|---|
| Number of ballots marked against applicant | 5 |
| Number of ballots segregated and not counted | 1 |

**0789-11-R:** Canadian Union of Public Employees (Applicant) v. The Children's Aid Society of Brant Inc. (Respondent)

Unit: "all employees employed by The Children's Aid Society of Brant Inc. - Native Services Branch who provide services to clients living on the First Nations Reserves: the Six Nations of the Grand River and the Mississaugas of the New Credit, in the town of Ohsweken, save and except managers, those above the rank of manager and those currently represented by an existing trade union" (21 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 22 |
| Number of persons who cast ballots | 17 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 17 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 17 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**0798-11-R:** International Brotherhood of Electrical Workers, Local 115 (Applicant) v. 1766991 Ontario Ltd. o/a RB Electric (Respondent) v. CLAC (Intervener)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of 1766991 Ontario Ltd. o/a RB Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of 1766991 Ontario Ltd. o/a RB Electric in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 5 |
| Number of persons who cast ballots | 5 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 2 |
| Number of ballots segregated and not counted | 0 |

**0804-11-R:** Ontario Public Service Employees Union (Applicant) v. Orillia Soldiers' Memorial Hospital (Respondent)

Unit: "all office and clerical employees of Orillia Soldiers' Memorial Hospital in the City of Orillia, save and except supervisors and persons above the rank of supervisor, Administrative Assistants to the Senior Leadership Team, Human Resource Assistants, IT staff, finance and payroll staff, students, and persons for whom any trade union held bargaining rights as of the date of this Application" (163 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 149 |
| Number of persons who cast ballots | 131 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 121 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 4 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 73 |
| Number of ballots marked against applicant | 51 |
| Number of ballots segregated and not counted | 7 |

**0828-11-R:** Amalgamated Transit Union, Local 113 (Applicant) v. York BRT Services L.P./Veolia Transportation (Respondent)

Unit: "all employees of York BRT Services L.P./Veolia Transportation employed in or out of the Region of York save and except inspectors, supervisors, persons above the rank of supervisor, office and sales staff and persons for whom a trade union held bargaining rights under the Labour Relations Act as of June 3, 2011" (20 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 23 |
| Number of persons who cast ballots | 20 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 18 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 18 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 2 |

**0841-11-R:** Teamsters Local Union No. 91 (Applicant) v. The Corporation of the Township of Madawaska Valley (Respondent)

Unit: "all employees of The Corporation of the Township of Madawaska Valley working in and out of 49 Arena Road, Barry's Bay, excluding office staff, clerks, arena staff, students, supervisors and those above the rank of supervisor" (12 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 12 |
| Number of persons who cast ballots | 12 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 12 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 8 |

| | |
|---|---|
| Number of ballots marked against applicant | 4 |
| Number of ballots segregated and not counted | 0 |

**0859-11-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Lasalle (Respondent)

Unit: "all seasonal Municipal Outside Workers employed by The Corporation of the Town of LaSalle, in the Town of LaSalle, save and except for managers, those above the rank of managers, and those currently represented by an existing Trade Union." (7 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 7 |
| Number of persons who cast ballots | 7 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 7 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 7 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**0905-11-R:** Workers United Canada Council (Applicant) v. Five Brothers Hospitality Partnership Ltd. c.o.b. Best Western St. Catharines Hotel & Conference Centre (Respondent)

Unit: "all front desk employees of Five Brothers Hospitality Partnership Ltd. c.o.b. Best Western St. Catharines Hotel & Conference Centre at 2 North Service Road, St. Catharines, Ontario, including night auditors, save and except supervisors and persons above the rank of supervisor" (7 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 7 |
| Number of persons who cast ballots | 6 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

## Applications for Certification Dismissed Subsequent to Vote

**3104-10-R:** IBEW Construction Council of Ontario (Applicant) v. Toth Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of the responding party in all other sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 5 |
| Number of persons who cast ballots | 5 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 2 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 0 |

**0466-11-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Source Security and Investigations Inc. (Respondent)

Unit: "all employees of Source Security and Investigations Inc. at 7755 Hurontario Street in the City of Brampton, save and except the Regional Director and those above the rank of Regional Director." (9 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 8 |
| Number of persons who cast ballots | 8 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 3 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 5 |
| Number of ballots segregated and not counted | 0 |

**0480-11-R:** The Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Lastman Furniture Inc. and/or Bad Boy Furniture Warehouse Limited carrying on business as Lastman's Bad Boy Superstore (Barrie, ON) (Respondent)

Unit : "all employees of the Bad Boy Furniture Warehouse in the City of Barrie, Ontario save and except assistant managers and persons above the rank of assistant manager" (13 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 17 |
| Number of persons who cast ballots | 15 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 15 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 12 |
| Number of ballots segregated and not counted | 0 |

**0641-11-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Applicant) v. Cooksville Steel Limited (Respondent)

Unit: "all employees of Cooksville Steel Limited in the Regional Municipality of Waterloo, save and except foremen, persons above the rank of foreman, office and sales staff" (18 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 19 |
| Number of persons who cast ballots | 17 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 15 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked against applicant | 10 |
| Number of ballots segregated and not counted | 2 |

**0778-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. ADM Agri-Industries Company (Respondent)

Unit: "all employees of ADM Cocoa Canada Ltd., in the Regional Municipality of Halton Hills, save and except supervisors and persons above the rank of supervisor, office and clerical staff, and sales representatives" (40 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 41 |
| Number of persons who cast ballots | 39 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 39 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 17 |
| Number of ballots marked against applicant | 22 |
| Number of ballots segregated and not counted | 0 |

**0913-11-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Bodycote Thermal Processing Canada Inc. (Respondent)

Unit: "all employees of Bodycote Thermal Processing Canada, Inc., in the City of Kitchener, save and except managers and those above the rank of manager, office, clerical, lab and sales employees" (20 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 23 |
| Number of persons who cast ballots | 24 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 17 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 3 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked against applicant | 13 |

## Applications for Certification Withdrawn

**2481-08-R:** Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Forzani Group Ltd. (Respondent)

**3214-09-R:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Networks Inc. (Respondent)

**2546-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Chelo's Corp. (Respondent)

**3647-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Authen-Tech Communications Canada Inc. (Respondent)

**3917-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Westin Homes Ltd. (Respondent)

**4234-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Gregus Millwork Ltd. (Respondent)

**0291-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Abbey Caulking, Maintenance & Restoration Ltd. (Respondent)

**0321-11-R:** The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township Georgina (Respondent)

**0446-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Abbey Caulking, Maintenance & Restoration Ltd. (Respondent)

**0594-11-R:** Labourers' International Union of North America, Local 1089 (Applicant) v. Coores Construction Inc. (Respondent)

**0680-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Coores Construction Inc. (Respondent)

**0717-11-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Total Care Transport Services Inc. (Respondent)

**0814-11-R:** Labourers' International Union of North America, Local 837 (Applicant) v. Aramark Canada Ltd. (Respondent)

**0876-11-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. 1283392 Ontario Ltd. o/a The Peerless Group (Respondent)

**0985-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Norall Group Inc. (Respondent)

**1043-11-R:** Canadian Union of Public Employees (Applicant) v. The Salvation Army The Honourable Ray & Helen Lawson Eventide Home (Respondent) v. Niagara Health Care and Service Workers Union Local 302, affiliated with Christian Labour Association of Canada (Intervener)

## FIRST AGREEMENT - DIRECTION

**0777-11-FC**: Labourers' International Union of North America, Local 247 (Applicant) v. Build-All Contractors (Respondent) *(Dismissed)*

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**0641-08-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ballygarven Homes Limited and/or, Ballygarven Building Corp. and/or, Ballygarven Homes (Markham) Limited and/or, Ballygarven Homes (Calvert) Ltd. and/or, Ballygarven Homes (Newmarket) Ltd. and/or, Ashford Estates Inc. (Respondent) *(Withdrawn)*

**2587-08-R**: Carpenters Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Forzani Group Ltd., Sport-Chek International 2000 Ltd. (Respondent) *(Granted)*

**0483-10-R:** International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Clairmont Electric Inc. and, B.C. North Contracting of Muskoka Ltd. c.o.b. as B.C. North Electric (Respondent) *(Withdrawn)*

**3865-10-R:** International Brotherhood of Electrical Workers, Local 120 (Applicant) v. 2176377 Ontario Inc. o/a Denby Electric and, William Dowds & Sons Inc. (Respondent) *(Withdrawn)*

**3913-10-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Douglas Westergard c.o.b. as Doncor Construction Ltd. (a cancelled corporation) and, Douglas Westergard c.o.b. as Ironhorse Contracting Inc. (a cancelled corporation) (Respondent) *(Withdrawn)*

**4154-10-R**: International Brotherhood of Electrical Workers Local 586 (Applicant) v. 1702786 Ontario Inc., 1168768 Ontario Inc., 1750872 Ontario Inc., 1633676 Ontario Inc., 1727807 Ontario Inc. and, 1503893 Ontario Inc. (Respondent) *(Granted)*

**0670-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bevi Carpentry Ltd. and/or Bevi Carpentry and/or, 2216302 Ontario Inc. (Respondent) *(Granted)*

**0678-11-R**: Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. Rover Heating & Air Conditioning Ltd., Ben Air Systems Inc. (Respondent) *(Withdrawn)*

## SALE OF A BUSINESS

**0483-10-R:** International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Clairmont Electric Inc. and, B.C. North Contracting of Muskoka Ltd. c.o.b. as B.C. North Electric (Respondent) *(Withdrawn)*

**3865-10-R:** International Brotherhood of Electrical Workers, Local 120 (Applicant) v. 2176377 Ontario Inc. o/a Denby Electric and, William Dowds & Sons Inc. (Respondent) *(Withdrawn)*

**3913-10-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Douglas Westergard c.o.b. as Doncor Construction Ltd. (a cancelled corporation) and, Douglas Westergard c.o.b. as Ironhorse Contracting Inc. (a cancelled corporation) (Respondent) *(Withdrawn)*

**0670-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bevi Carpentry Ltd. and/or Bevi Carpentry and/or, 2216302 Ontario Inc. (Respondent) *(Granted)*

**0678-11-R**: Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. Rover Heating & Air Conditioning Ltd., Ben Air Systems Inc. (Respondent) *(Withdrawn)*

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0019-10-R:** John Moretti (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Respondent) v. Moretti Carpentry Construction (Intervener) *(Granted)*

Unit: "all employees of Moretti Carpentry Construction, including carpenters and framers and their respective learners and improvers, construction labourers, and pieceworkers as defined in Schedules " A" and " B", engaged in the construction of all phases of housing including the preparation of footings, the fabrication, renovation, alteration, erection and finishing thereof, exterior trim and similar work, save and except those persons above the rank of foreman and office, clerical and engineering staff, while working in and out of the following Geographic Areas of the Ontario Labour Relations Board Area Numbers 8, 9,10, 11 and that portion of Board Area 12 which is west of the Trent Severn Waterway and 18 provided that the requirements of Letter of Understanding No. 6 are satisfied." (1 employee in unit)

**2287-10-R:** Stuart Gobbo (Applicant) v. Labourer's International Union of North America, Local 625 (Respondent) v. Soulliere Solutions Inc. (Intervener) *(Granted)*

Unit: "all construction labourers in the employ of Soulliere Solutions Inc. in all sectors of the construction industry in the counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 11 |
| Number of persons who cast ballots | 11 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 2 |
| Number of ballots marked against respondent | 7 |
| Number of ballots segregated and not counted | 2 |

**3207-10-R:** Employees of Seasons Lakeshore (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) v. Seasons Retirement Communities GP Inc. operating as Seasons Lakeshore (Intervener) *(Dismissed)*

Unit: "all employees of Oak Park Lakeshore Inc. c.o.b. Oak Park Lakeshore in the town of Belle River, in the County of Essex save and except supervisors, persons above the rank of supervisor, and office and clerical staff" (43 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 43 |
| Number of persons who cast ballots | 39 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 39 |

| | |
|---|---|
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 31 |
| Number of ballots marked against respondent | 8 |
| Number of ballots segregated and not counted | 0 |

**4260-10-R:** Claudette Bradshaw (Applicant) v. Hospitality & Services Trades Union Local 261 (Respondent) v. Palisades Retirement Residence Inc. (Intervener) *(Granted)*

Unit: "the Employer recognizes the Hospitality & Services Trades Union, Local 261 as sole and exclusive collective bargaining agent for all employees employed by the Palisades Ottawa Retirement Residence Inc. at 480 Metcalfe Street in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, security guards, one confidential accounting employee and one employee primarily engaged in sales and marketing" (65 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 65 |
| Number of persons who cast ballots | 35 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 34 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 22 |
| Number of ballots marked against respondent | 12 |
| Number of ballots segregated and not counted | 1 |

**0576-11-R:** Derek Foucault & the Employees of Espanola Frescho formerly Price Chopper (Applicant) v. Northern Ontario Joint Council of the Retail Wholesale and Department Store Union District Council of the United Food and Commercial Workers International Union (Respondent) *(Dismissed)*

Unit: "the employer recognizes the Union as the sole and exclusive bargaining agent for all its employees at its retail store operation located at 800 Centre Street in the Espanola Mall In Espanola, Ontario, save and except Head Cashier, Meat Manager, Produce Manager, bakery Manager, Deli Manager, Assistant Store Manager, Store Manager and persons above the rank of Store Manager" (55 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 48 |
| Number of persons who cast ballots | 33 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 30 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 3 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 18 |
| Number of ballots marked against respondent | 12 |
| Number of ballots segregated and not counted | 3 |

**0689-11-R:** Theodore Thissen (Applicant) v. National Automobile, Aerospace, Transportation and General Workers' Union of Canada, (C.A.W.- Canada) and its Local 1837 (Respondent) *(Granted)*

Unit: "all hourly employees of Bombardier Inc., Mass Transit - North America, Kingston site in Millhaven, Ontario, save and except supervisors, persons above the rank of supervisor, engineers, snowplow operators, planners, office, clerical, sales staff and security guards" (7 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 7 |
| Number of persons who cast ballots | 7 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 7 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 0 |
| Number of ballots marked against respondent | 7 |
| Number of ballots segregated and not counted | 0 |

**0723-11-R:** Alex Gross, on behalf of the employees of Compass Group Canada at Copps Coliseum, as represented by UNITE HERE! Canada Local 2754/Local 75 (Applicant) v. UNITE HERE! CANADA LOCAL 2754/ LOCAL 75 (Respondent) v. Compass Group Canada - Copps Coliseum (Intervener) *(Dismissed)*

Unit: "Definition from Unite HERE! Canada Collective Agreement states: "The Employers recognizes the union as a sole and exclusive of all hourly employees of Compass Group Canada employed at the Copp Centre, 101 York Boulevard, Hamilton, Ontario, save and except all supervisors, persons above the rank of supervisors, chefs, clerical and administrative staff and guards." Article 301" (87 employees in unit)

**0761-11-R:** Build All Contractor's Employees c/o Frank May (Applicant) v. Labourers' International Union of North America, Local 247 (Respondent) *(Dismissed)*

**1041-11-R:** Patrizia Falsetto (Applicant) v. Hospitality and Service Trade Union Local 261 (Respondent) v. Travelodge Ottawa West Hotel and Conference Centre (Intervener) *(Dismissed)*

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0039-06-U:** Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. Swift Railroad Contractors Corporation (Respondent) *(Granted)*

**0662-06-U:** Carol Klue, Helen Leoni, Kathy Rigby (Applicant) v. CUPE Local 1734 (Respondent) *(Dismissed)*

**1669-06-U:** Communications, Energy and Paperworkers Union of Canada, Local 37X (Applicant) v. Grant Forest Products Inc., G.R. Roy and, Levert Personnel Resources Inc. (Respondent) *(Dismissed)*

**0320-08-U:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ballygarven Homes Limited and/or, Ballygarven Building Corp. and/or, Ballygarven Homes (Markham) Limited and/or, Ballygarven Homes (Calvert) Ltd. and/or, Ballygarven Homes (Newmarket) Ltd. and/or, Ashford Estates Inc. (Respondent) *(Withdrawn)*

**1602-08-U:** Pierre Goulet (Applicant) v. Le Syndicat international des travailleurs unis de la métallurgie, du papier et de la forestrie, du caoutchouc, de la fabrication, de l'énergie, des services et industries connexes (les Métallos, section locale 1-2995 ou le Syndicat des Métallos Unis d'Amérique, Section 1-2995) (Respondent) *(Dismissed)*

**2152-08-U:** International Union of Painters and Allied Trades, Local 1819-Glaziers (Applicant) v. Flynn Canada Ltd., International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Respondent) *(Dismissed)*

**0730-09-U:** Teamsters Local Union No. 879 (Applicant) v. Richardson Foods Division of Heinz Canada (Respondent) *(Terminated)*

**1765-09-U:** Service Employees International Union Local 1 Canada (Applicant) v. Princess Margaret Hospital (Respondent) v. Ontario Workers' Union (Intervener) *(Withdrawn)*

**1886-09-U:** Power Workers' Union CUPE Local 1000-CLC (Applicant) v. Ontario Power Generation Inc., Rob Pettula and Craig Wardrop (Respondent) *(Withdrawn)*

**1950-09-U:** Robert Kominar and, Maggy Murray (Applicant) v. The Association of Management, Administrative and Professional Crown Employees of Ontario, The Crown in Right of Ontario as represented by the Financial Services Commission of Ontario (Respondent) *(Dismissed)*

**0423-10-U:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

**0788-10-U:** William Hussey (Applicant) v. Graphic Communications Conference/International Brotherhood of Teamsters and its Local 100-M (Respondent) *(Dismissed)*

**0857-10-U:** Ermin Shaw (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 8694 (Respondent) v. Faurecia Automotive Seating Canada Ltd. (Intervener) *(Terminated)*

**0881-10-U:** Kanapathipillai Yohanathan (Applicant) v. Ontario Federation of Health Care Workers, LIUNA Local 1110 (Respondent) v. Specialty Care Mississauga Road (Intervener) *(Withdrawn)*

**1488-10-U:** Alan Winterburn (Applicant) v. Canadian Auto Workers and Canadian Auto Workers, Local 1973 (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

**1687-10-U:** Ibrahim Ahmed (Applicant) v. UNITE Here Local 75 (Respondent) v. Toronto Hilton (Intervener) *(Dismissed)*

**1762-10-U:** Vyollce Bytzqi, Nurishahe Morina, Myrna Molina et al, Members Houskeeping Department Waterfront Hotel Downtown Burlington (Applicant) v. United Food and Commercial Workers Union Local 102 (Respondent) v. Burlington 2020 Lakeshore Inc. o/a Waterfront Hotel (Intervener) *(Dismissed)*

**2310-10-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Seal-On Paving Limited, Arnill Construction Limited and Seeley & Arnill Construction Limited (Respondent) *(Withdrawn)*

**2475-10-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. BF Environmental Consultants Ltd. (Respondent) *(Withdrawn)*

**2875-10-U:** Savitri Persaud (Applicant) v. Canadian Union of Public Employees and its Local 1307 (Respondent) v. Extendicare (Canada) Inc., West End Villa (Intervener) *(Dismissed)*

**2895-10-U:** Ontario Nurses' Association (Applicant) v. Gibson Holdings (Ontario) Ltd O/A Helen Henderson Care Centre (Respondent) *(Dismissed)*

**2974-10-U:** Public Service Alliance of Canada (Applicant) v. Queen's University at Kingston (Respondent) *(Withdrawn)*

**3181-10-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. 371616 Ontario Limited c.o.b. as R & J Mechanical (Respondent) *(Withdrawn)*

**3202-10-U:** James Upson (Applicant) v. Teamsters Local 938 (Respondent) *(Dismissed)*

**3234-10-U:** Service Employees International Union Local 1 Canada (Applicant) v. Jessica Jones, Seasons Retirement Communities GP Inc. operating as Seasons Lakeshore (Respondent) *(Withdrawn)*

**3676-10-U:** Hoda Morsi (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Her Majesty the Queen in Right of Ontario Operating as the Ministry of Revenue (Intervener) *(Dismissed)*

**3703-10-U:** Troy Christopher Barna (Applicant) v. National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) and its Local 1106 (Respondent) *(Withdrawn)*

**3795-10-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Authen-Tech Communications Canada Inc. (Respondent) *(Withdrawn)*

**3890-10-U:** Sabu Joseph Manimalethu (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) v. Cadbury Adams Inc. (Intervener) *(Dismissed)*

**3907-10-U:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1702786 Ontario Inc. and, 1168768 Ontario Inc. c.o.b as ABC Plumbing Heating & Electrical (Respondent) *(Withdrawn)*

**3986-10-U:** Service Employees International Union, Local 1 Canada (Applicant) v. Humber River Regional Hospital and, Ontario Workers' Union (Respondent) *(Dismissed)*

**4110-10-U:** Service Employees International Union, Local 1 Canada (Applicant) v. Mount Sinai Hospital and, Ontario Workers' Union (Respondent) *(Dismissed)*

**4176-10-U:** Allan Sumanis (Applicant) v. United Steelworkers of America, Local 6946 (Respondent) *(Withdrawn)*

**4237-10-U:** Labourers' International Union of North America, Local 506 (Applicant) v. City Wide Demolition Ltd. c.o.b. as Citywide Demolition & Excavation Ltd., Jason Caron in his personal capacity and c.o.b. as Down Right Demolition & Excavation Ltd., Dallas Dmytrow in his personal capacity and c.o.b. as Down Right Demolition & Excavation Ltd. (Respondent) *(Granted)*

**4283-10-U:** International Brotherhood of Electrical Workers, Local 115 (Applicant) v. Farmcor Limited (Respondent) *(Withdrawn)*

**4333-10-U:** Jonathan Teves (Applicant) v. United Steelworkers Local 838 (Respondent) v. Riverside Brass and Aluminum Foundry (Intervener) *(Withdrawn)*

**0041-11-U:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1702786 Ontario Inc. and, 1168768 Ontario Inc. c.o.b as ABC Plumbing Heating & Electrical or ABC Electric (Respondent) *(Withdrawn)*

**0077-11-U:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Floorwall Construction Ltd. and, Floorwall Forming Ltd. (Respondent) *(Granted)*

**0207-11-U:** Boateng Bismark (Applicant) v. Teamsters Local Union 938 (Respondent) *(Dismissed)*

**0255-11-U:** Robert J. Burke (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. The Corporation of the County of Simcoe (Intervener) *(Withdrawn)*

**0273-11-U:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Walden Day Care Centre Inc. (Respondent) *(Withdrawn)*

**0329-11-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Abbey Caulking, Maintenance & Restoration Ltd. and, Neil Jones (Respondent) *(Withdrawn)*

**0343-11-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Butcher Engineering Enterprises Ltd. (Respondent) *(Withdrawn)*

**0354-11-U:** Association of Part-Time Professors of the University of Ottawa ("APTPUO") (Applicant) v. University of Ottawa (Respondent) *(Withdrawn)*

**0358-11-U:** Todd Parsons (Applicant) v. Teamsters Canada Rail Conference (Respondent) v. Cando Rail Services Ltd. (Intervener) *(Withdrawn)*

**0447-11-U:** Kenneth Jorgensen (Applicant) v. General Motors of Canada Limited (Respondent) *(Withdrawn)*

**0491-11-U:** Larry G. Brown (Applicant) v. CAW Local 4457 (Respondent) *(Dismissed)*

**0537-11-U:** Canadian Union of Public Employees (Applicant) v. Elementary Teachers' Federation of Ontario ("ETFO") and, York Region District School Board ("YRDSB") (Respondent) *(Withdrawn)*

**0586-11-U:** Rui Pacheco (Applicant) v. Ontario Provincial Police Association (Respondent) *(Dismissed)*

**0615-11-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Coores Construction Inc., Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Respondent) *(Withdrawn)*

**0666-11-U:** Labourers' International Union of North America, Local 1089 (Applicant) v. Coores Construction Inc. and, Construction Workers Local 53 Affiliated with Christian Labour Association of Canada (Respondent) *(Withdrawn)*

**0734-11-U:** Robert Miceli (Applicant) v. CAW Local 414 Of National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Respondent) *(Terminated)*

**0735-11-U:** Martin A. Ozols (Applicant) v. C. U. P. E. Local 905 (Respondent) *(Terminated)*

**0748-11-U:** International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Corporation of the Town of Huntsville (Respondent) *(Withdrawn)*

**0785-11-U:** Bad Boy Furniture Warehouse Limited (Applicant) v. The Retail, Wholesale and Department Store Union District Council of The United Food and Commercial Workers International Union, Stephen Fetterly and Daniel O'Neil (Respondent) *(Withdrawn)*

**0786-11-U:** International Association of Machinists and Aerospace Workers (Applicant) v. 1791949 Ontario Ltd. "Airport Operations Support Services" (Respondent) *(Withdrawn)*

**0867-11-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Joriki Inc. (Respondent) *(Withdrawn)*

**0957-11-U:** Christopher Haddad (Applicant) v. Retail, Wholesale & Department Store Union District Council of the United Food and Commercial Workers International Union (Respondent) *(Dismissed)*

## APPLICATION FOR INTERIM ORDER

**3794-10-M**: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Authentech Communications Canada Inc. (Respondent) *(Withdrawn)*

**0574-11-M**: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tiltran Services Inc. and, AllStaff Inc. (Respondent) *(Dismissed)*

**0866-11-M:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Joriki Inc. (Respondent) *(Withdrawn)*

## JURISDICTIONAL DISPUTES

**2137-08-JD**: International Union of Painters and Allied Trades, Local 1819-Glaziers (Applicant) v. Flynn Canada Ltd., International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Respondent) *(Dismissed)*

**2688-10-JD:** The Crown in Right of Ontario as Represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Association of Management, Administrative and Professional Crown Employees of Ontario (Amapceo) (Intervener) *(Withdrawn)*

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**2928-09-OH:** Torfeh Parker (Applicant) v. Peel District School Board (Respondent) v. Ontario Secondary School Teachers' Federation (Intervener) *(Terminated)*

**1169-10-OH:** Shawn Marc Amerlinck and, Michael-John Knoblauch (Applicant) v. Brighton Court Apartments c/o Realstar Management, Bruce Maki, Wendy Nason Maki, Paul Halowaty and Deborah Warren Logar (Respondent) *(Terminated)*

**4056-10-OH:** Linda J. Hill (Applicant) v. Ultimate Performance Car (Respondent) *(Withdrawn)*

**0539-11-OH:** Allan Bradshaw (Applicant) v. Angelo Lorelli Service Centre (Respondent) *(Withdrawn)*

**0578-11-OH:** Aurelian Dumitru (Applicant) v. Globalive Wireless Management Corp. (also known as Wind Mobile) (Respondent) *(Dismissed)*

**0655-11-OH:** Labourers' International Union of North America, Local 1059 (Applicant) v. Abbey Caulking, Maintenance & Restoration Ltd., Rivers Edge, Neil Jones and, David Brownscombe (Respondent) *(Withdrawn)*

## CONSTRUCTION INDUSTRY GRIEVANCES

**3015-06-G:** Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Ottawa Business Interiors Ltd. (Respondent) *(Dismissed)*

**1291-09-G:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Ontario Power Generation Inc. (Respondent) v. Electrical Power Systems Construction Association "EPSCA" (Intervener) *(Granted)*

**1955-09-G:** International Brotherhood of Electrical Workers Electrical Power Council of Ontario (Applicant) v. E.S. Fox Limited (Respondent) v. Electrical Power Systems Construction Association (Intervener) *(Dismissed)*

**1266-10-G:** Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America on its own behalf and on behalf of its constituent union Local 2486 (Applicant) v. D & S Concrete (Timmins) Inc. Donald Banville c.o.b. as Timmins Concrete (Respondent) *(Granted)*

**1869-10-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Network Services Inc. (Respondent) *(Withdrawn)*

**2309-10-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Seal-On Paving Limited, Arnill Construction Limited and Seeley & Arnill Construction Limited (Respondent) *(Withdrawn)*

**3673-10-G:** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Inc. (BNPD Security Clearance) (Respondent) *(Withdrawn)*

**3915-10-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Douglas Westergard c.o.b. as Doncor Construction Ltd. (a cancelled corporation) and, Douglas Westergard c.o.b. as Ironhorse Contracting Inc. (a cancelled corporation) (Respondent) *(Withdrawn)*

**4251-10-G; 4256-10-G:** Carpenters' District Council of Ontario, Local 2041 (Applicant) v. Broccolini Construction (Ottawa) Inc. (Respondent); Carpenters' District Council of Ontario, Local 2041 (Applicant) v. Serco Construction Ltd. (Respondent) *(Withdrawn)*

**4284-10-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terra Construction Ltd. / Terra Structures Inc. (Respondent) *(Withdrawn)*

**0068-11-G:** United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. City of Hamilton (Respondent) *(Endorsed Settlement)*

**0086-11-G:** Carpenters District Council of Ontario, Local 2041 (Applicant) v. Acoustiques SM (2100943 Ontario Inc.) (Respondent) *(Withdrawn)*

**0129-11-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. EllisDon Corporation (Respondent) *(Withdrawn)*

**0139-11-G:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. PNR Railworks Inc. (Respondent) *(Withdrawn)*

**0253-11-G:** Terrazzo, Tile & Marble Guild of Ontario, Inc. (Applicant) v. Brick and Allied Craft Union of Canada (Respondent) v. Brick and Allied Craft Union of Canada, Local 31 and International Union of Bricklayers and Allied Craftworkers, Local 31 (Intervener) *(Granted)*

**0267-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local 71 (Applicant) v. Carmec & Plumbing & Heating Ltd. (Respondent) *(Terminated)*

**0397-11-G; 0580-11-G:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. AD Mechanical Insulation Inc. (Respondent) *(Granted)*

**0438-11-G:** International Brotherhood of Electrical Workers Electrical Power Council of Ontario (Applicant) v. E.S. Fox Ltd. (Respondent) *(Withdrawn)*

**0459-11-G:** Labourers' International Union of North America, Local 493 (Applicant) v. Aecon Construction & Materials Limited (Respondent) *(Withdrawn)*

**0558-11-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Aecon Industrial (Respondent) *(Dismissed)*

**0570-11-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1503893 Ontario Inc. (Respondent) *(Withdrawn)*

**0573-11-G:** Carpenters District Council of Ontario, Local 93 (Applicant) v. Presto Construction Inc. (Respondent) *(Withdrawn)*

**0638-11-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. C. Frappier Electrique Inc. (Respondent) *(Granted)*

**0664-11-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. A.C. Concrete Forming Ltd. (Respondent) *(Granted)*

**0673-11-G:** The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Associated Painting Limited (Respondent) *(Granted)*

**0684-11-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 6665268 Canada Inc. o/a Absolute Installations (Respondent) *(Granted)*

**0693-11-G:** The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. Brett Robertson and Dane Robertson c.o.b. as TRB Glazing Applications (Respondent) *(Granted)*

**0702-11-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. C & M Electric Limited (Respondent) *(Withdrawn)*

**0721-11-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Presto Construction Inc. (Respondent) *(Granted)*

**0724-11-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. H.B. White Canada Corporation (Respondent) *(Terminated)*

**0732-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. C.H. Excavating (London) Ltd. (Respondent) *(Granted)*

**0737-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ehrlich Electric Company (Respondent) *(Granted)*

**0746-11-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1702786 Ontario Inc. (Respondent) *(Granted)*

**0769-11-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Aura's Services (Respondent) *(Endorsed Settlement)*

**0790-11-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Taydan Glass Inc. (Respondent) *(Granted)*

**0799-11-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Limen Masonry (2003) Inc. (Respondent) *(Granted)*

**0802-11-G:** Carpenters' District Council of Ontario, Local 2041 (Applicant) v. Credal Construction (Respondent) *(Terminated)*

**0811-11-G:** Carpenters' District Council of Ontario, Local 2041 (Applicant) v. Nation Drywall Contractors Ltd. (Respondent) *(Terminated)*

**0839-11-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Buttcon Ltd. (Respondent) *(Withdrawn)*

**0884-11-G:** Sheet Metal Workers International Association, Local Union No. 47 (Applicant) v. Flynn Canada Ltd. (Respondent) *(Granted)*

**0895-11-G:** International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 1710488 Ontario Ltd. o/a Ararat Eifs Wall Systems (Respondent) *(Granted)*

**0928-11-G; 0930-11-G:** International Union of Elevator Constructors, Local 50 (Applicant) v. Otis Canada Inc. (Respondent) *(Withdrawn)*

**0970-11-G:** The International Union of Painters and Allied Trades, Local Union 1590 (Applicant) v. Harkness-Waters (2005) Ltd. (Respondent) *(Granted)*

**1015-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Total Underground Solutions Co. Ltd. (Respondent) *(Withdrawn)*

**1019-11-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Guyan Group Inc. (Respondent) *(Withdrawn)*

**1075-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Jones Group (Respondent) *(Dismissed)*

**1097-11-G:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

## APPEALS - EMPLOYMENT STANDARDS ACT

**2454-06-ES:** Jennifer Armstrong (Applicant) v. Multi Channel Communications Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

**3622-06-ES:** Charlie Frazier (Applicant) v. Dolce International (Ont) Co. and, Director of Employment Standards (Respondent) *(Terminated)*

**2021-09-ES:** King's Buffet o/b 1409505 Ontario Inc. (Applicant) v. Kelly Forgues and, Director of Employment Standards (Respondent) *(Terminated)*

**2609-09-ES; 2610-09-ES:** Kwan Soo Park (Applicant) v. Ichiban Sushi House Inc. and, Director of Employment Standards (Respondent); Ichiban Sushi House Inc. (Applicant) v. Kwan Soo Park and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3002-09-ES:** Dr. David Freedman (Applicant) v. Michelle Jankovski and, Director of Employment Standards (Respondent) *(Granted)*

**3086-09-ES:** Jose Romero o/a Building Permit Consultants (Applicant) v. Fernando Rodriguez and, Director of Employment Standards (Respondent) *(Granted)*

**3500-09-ES:** Ahmed Mohamed (Applicant) v. The Time Shop Inc., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3947-09-ES:** John Arkelian (Applicant) v. Durham College of Applied Arts and Technology, Director of Employment Standards (Respondent) *(Terminated)*

**3985-09-ES:** Henry Duane Schmitz (Applicant) v. A.E. Kavanagh Holdings Inc. o/a Golf North Properties and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0598-10-ES** Sanford N. Pensler, a director of Korex Don Valley ULC, (Applicant) Ted Adams, Steve Ashley, Sebastian Assenza, David Baker, Solomon Bakharia, Leslie Beavan, Anthony Borg, Gary W. Boyd, Mike Boyd, Marie Brett, Reginald Bright, Susan Broadbent, Randolph Brown, Stephen Brown, Kenneth Brunton, Mahipaul Budnarain, Alexander Burlie, George Burlie, Ian Cameron, Sam Cancilla, Vincent Chan, Tom Cheung, Clarence Christian, John Ciordas, Fred J. Cook, Corey Corbin, Kim Cossar, Ryan Cox, David Cranstoun, Marcel Croteau, Mariano Cruz, Rick Cuthbert, Anthony Beckmans, Vince Delmedico, Vincent Dow, Christopher Downing, Ralph Downing, William Downing, David Dupuis, Peter Durnford, Hal Engelmann, Kelvin Ferguson, Paul Filipchuk, Raymond Fisher, Tony Flanagan, Gerald Forget, Michael Forget, Ronald Francis, Raselyn Gabriel, Jose Garde, James Garden, Kyle Garden, Marie Gariepy, Ronald Gaudet, Cliff Gibbons, Marc Goldin, Cecil Gray, Cindy Gray, Grace Guevara, Zubin Hansotia, Kenneth Hawkins, Tony Hewitt, Robert Hickie, Gerald Hitchcock, Paul Hunter, Akhtar Hussain, Harvey Jamieson, Brian Janes, Eva Jankovska, Arthur Jessop, Ian Johnstone, Peter Kataswa, Robert Kilgar, Derek Kotyluk, Patrick Lasorda, Matthew Lawson, Kevin Lee, Slava Levitin, Jongjun Li, Michael Lin, Donald Lockrey, Lawrence Lopresti, James Lozinski, Edward G. Ludgaate, Allan Lush, William Mackey, Vernon Marchaud, Paulo Martins, Stephen McConnack, Delbert McCulloch, Robert McCulloch, Wayne McDowell, Dean McGuire, Gary (Randy) McKibbon, Daulton McKitty, William McLachlan, Craig McRae, Barbara Mogavero, Peter Morgan, Angus Morrison, Glenn Morrison, Steven Mu, Robert Nasevski, Paul Neville, Helen Ngai, David Nixon, Emmanuel Osawe, Balram Outram, David Pal, Shane Park, Shailesh K. Patel, Larry Perkins, Tony Petracca, Scott Pflieger, Evelyn Pinsent, Robert Platt, Ernest Prentice, Dino Presutti, Marlene Pritchard, Nazeem Rahman, Peter Rechkemmer, George Reddy, Marino Regaspi, Emmanuel Reyes, Asif Riaz, Jack Roder, Allan Rosette, Alex Santos, Douglas Scott, William Scott, Olga Semechlo, Robert Sherk, Earnest Shimano, Robert Shimton, Charles Shipley, Ronald Short, Todd Short, Lakeram Singh, Paul Singh, James Smith, Frank Sobolewski, Peter Stapleton, Marek Szczygiel, Ramon Tantengco, Glenn Tennant, Chris Terpin, Kirk Tooley, Hien D. Tran, Robert Tucker, Dennis Valllilee, Jon Van Pelt, Jan Varady, Ryan Xinhai Wang, Tom Webber, John Welsh, Keith Wharmby, Richard Wilks, Lionel Williams, John Wyton, Zhi Hue Eric Zhao, Lily Zhou and Director of Employment Standards (Respondent) *(Dismissed)*

**1054-10-ES:** 1387969 Ontario Limited o/a Bonfire BBQ (Applicant) v. Crissy (Angela) Woolacott and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1055-10-ES:** 1387969 Ontario Limited o/a Bonfire BBQ (Applicant) v. Debera L. Ross and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1250-10-ES:** Wayne MacNeil (Applicant) v. NABORS - Neighbours Allied for Better Opportunities in Residential Support and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1707-10-ES:** Dennis Timbrell, a director of Envizion Solutions Inc. (Applicant) v. Anne K. Wiltshire and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1773-10-ES:** Najeed Esho (Applicant) v. L.A. Global Auto Parts & Bumper Recyclers Ltd. and, Director of Employment Standards (Respondent) *(Granted)*

**1900-10-ES:** David Langer (Applicant) v. Garda Canada Security Corporation and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1904-10-ES:** Teresa Ruberto (Applicant) v. Four Star Dairy Limited and, Director of Employment Standards (Respondent) *(Withdrawn)*

**2040-10-ES:** John Laekeman (Applicant) v. Bishopgate Garage Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2061-10-ES:** Shelley Wensink (Applicant) v. P.R.O. Security & Investigation Agency Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2165-10-ES:** Montecassino Hospitality Group Inc. (Applicant) v. Rosario Disla and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2167-10-ES:** Montecassino Hospitality Group Inc. (Applicant) v. Ana Sosa and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2168-10-ES:** Montecassino Hospitality Group Inc. (Applicant) v. Ylda Socorro Gomez and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2282-10-ES:** Heritage Construction Group Limited (Applicant) v. Manuel Alvarez and, Director of Employment Standards (Respondent) *(Dismissed)*

**2371-10-ES:** Roxanna Harvey (Applicant) v. Just Energy Corp. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2373-10-ES:** 1070377 Ontario Inc. o/a Nick's Courier (Applicant) v. James Widder and, Director of Employment Standards (Respondent) *(Dismissed)*

**2432-10-ES:** 1678808 Ontario Ltd. operating as Trican Accounting Services (Applicant) v. Miranda Graham and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2437-10-ES:** Carlucci Cleaning operating as Carlucci Cleaning (Applicant) v. Jason Sebasta and, Director of Employment Standards (Respondent) *(Granted)*

**2448-10-ES:** Janos Burai (Applicant) v. Hospitality Resorts Inc., Hilton Niagara Falls and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2521-10-ES:** 1070377 Ontario Inc. o/a Nick's Courier (Applicant) v. Kevin Aikin and, Director of Employment Standards (Respondent) *(Dismissed)*

**2573-10-ES; 2574-10-ES; 2575-10-ES; 2576-10-ES:** PR Maintenance Inc. (Applicant) v. Lorraine Landers and, Le directeur des norms d'emploi (Respondent); Maintenance Inc. (Applicant) v. Wayden Madden et, Le directeur des norms d'emploi (Respondent); PR Maintenance Inc. (Applicant) v. Robert Pichette et, Le directeur des norms d'emploi (Respondent); PR Maintenance Inc. (Applicant) v. Marcel Madden et, Le directeur des norms d'emploi (Respondent) *(Withdrawn)*

**2666-10-ES:** Gordon McCaskill, a Director of 4Poyntz Dezign Inc. (Applicant) v. Robert Nino and, Director of Employment Standards (Respondent) *(Granted)*

**2849-10-ES:** Kennedy House Youth Services Inc. (Applicant) v. Mark Hastings and, Director of Employment Standards (Respondent) *(Granted)*

**3000-10-ES:** Priyance Hospitality Inc. o/a Radisson Plaza Mississauga Toronto Airport (Applicant) v. Mrs. Zakie Younan, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3023-10-ES:** Steve Baas (Applicant) v. Muskoka Delivery Services Inc., Director of Employment Standards (Respondent) *(Withdrawn)*

**3074-10-ES:** Judy Fisher (Applicant) v. Royal Property Management Limited, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3147-10-ES:** Douglas Carson (Applicant) v. 1131418 Ontario Limited o/a Domino's Pizza, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3183-10-ES:** Inter-Cultural Neighbourhood Social Services (Applicant) v. Kulvinder Bisla and, Director of Employment Standards (Respondent) *(Dismissed)*

**3211-10-ES:** Spectra Aluminum Product Ltd. (Applicant) v. Alex Krawiec and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3241-10-ES:** Nuage Medspa Inc. o/a Nuage Med Spa (Applicant) v. Christina D'Andrea, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3461-10-ES:** Anette Targowski, Dancing Blueberries & Desserts (Applicant) v. Kyra Mills and, Director of Employment Standards (Respondent) *(Dismissed)*

**3509-10-ES:** Mr. Donald Schroeder (Applicant) v. 1035312 Ontario Limited o/a Brampton Chrysler Dodge JE, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3621-10-ES:** Jennifer Roy o/a Professional House Cleaners (Applicant) v. Michelle Baird and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3627-10-ES:** Kevin Schaafsma (Applicant) v. Quinlan Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**3671-10-ES:** Hall Tree Farms Inc. (Applicant) v. Terry Playter, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3710-10-ES:** The Ranch Inc. (Applicant) v. Melissa Betts and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3722-10-ES:** Dean Boone (Applicant) v. Cut-A-Die Canada Limited and, Director of Employment Standards (Respondent) *(Withdrawn)*

**3729-10-ES:** Natasha Yannick Crudup, a Director of Urban Heat Legends Inc. (Applicant) v. Samantha Smith and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3774-10-ES:** Canadian Auto Parts Suppliers Ltd. (Applicant) v. Felix Labelle, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3778-10-ES:** 2194308 Ontario Inc. (Applicant) v. Neena Bhatia and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3806-10-ES:** Carbon Steel Profiles Limited (Applicant) v. Steve Semren and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3812-10-ES:** Chester Post (Applicant) v. Boutette & Barnett Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3819-10-ES; 3820-10-ES; 3821-10-ES; 3822-10-ES; 3823-10-ES; 3824-10-ES; 3825-10-ES; 3826-10-ES; 3827-10-ES; 3828-10-ES**: Mike Moore & Sons Construction Ltd. (Applicant) v. Fern Moore, and Director of Employment Standards (Respondent); Mike Moore & Sons Construction Ltd. (Applicant) v. John McCulloch, and Director of Employment Standards (Respondent); Mike Moore & Sons Construction Ltd. (Applicant) v. Wayne Seibt, and Director of Employment Standards (Respondent); Mike Moore & Sons Construction Ltd. (Applicant) v. Ken Coventry, and Director of Employment Standards (Respondent); Mike Moore & Sons Construction Ltd. (Applicant) v. Dwayne Phillips, and Director of Employment Standards (Respondent); Fern Moore (Applicant) v. Mike Moore & Sons Construction Ltd., and Director of Employment Standards (Respondent); Ken Coventry (Applicant) v. Mike Moore & Sons Construction Ltd., and Director of Employment Standards (Respondent); John McCulloch (Applicant) v. Mike Moore & Sons Construction Ltd., and Director of Employment Standards (Respondent); Wayne Seibt (Applicant) v. Mike Moore & Sons Construction Ltd., and Director of Employment Standards (Respondent); Dwayne Phillips (Applicant) v. Mike Moore & Sons Construction Ltd., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3844-10-ES:** Evelyne Mikhail (Applicant) v. Loyaltyone, Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**3861-10-ES**: Michael Kirwan (Applicant) v. United Rentals of Canada, Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3897-10-ES:** Trimen Food Service Equipment Inc. (Applicant) v. Hong Yi Zhen and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3920-10-ES:** Aecon Group Inc./Groupe Aecon Inc. o/a QX Technical Services (Applicant) v. Marco Ciardullo, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3963-10-ES:** Johnathan Hacohen, A Director of Frankfurters Inc. (Applicant) v. Marianne Austin, Aaron Curry, Amanda Story, Katie Hutz, Lorrie Beesley, Michael Wilson, Peggy Simmons and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3964-10-ES:** Ernest S. Petrasovic (Applicant) v. Chriscot Holdings Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3991-10-ES; 3992-10-ES; 4143-10-ES; 0880-11-ES:** Tong Qing (Tony) Lu (Applicant) v. Ming Pao Newspapers (Canada) Limited and, Director of Employment Standards (Respondent); Winsome Ng (Applicant) v. Ming Pao Newspapers (Canada) Limited and, Director of Employment Standards (Respondent); Ming Pao Newspapers (Canada) Limited (Applicant) v. Tong Qing (Tony) Lu and, Director of Employment Standards; Ming Pao Newspapers (Canada) Limited (Applicant) v. Brenda Chu and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3993-10-ES**: Niagara 21st Group Inc. (Applicant) v. Darold Campbell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4000-10-ES**: Leuschen Bros. Limited operating as Leuschen Brothers Ltd. (Applicant) v. Manuel T. Tavares and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4008-10-ES:** 1736646 Ontario Inc. o/a Shoeless Joe's Restaurant (Applicant) v. Joanna Presti and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4011-10-ES:** Nora Anderson (Applicant) v. Halton Forming (1992) Ltd. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**4082-10-ES:** 1140751 Ontario Limited operating as 1140751 Ontario Limited o/a Wilderness North (Applicant) v. Lori Jack and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4128-10-ES:** Mrs. Ruth I. Tuxford (Applicant) v. 2154781 Canada Ltd. o/a Woodbine Pontiac Buick GMC Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4157-10-ES:** Ron J. Brown (Applicant) v. Lathem Excavating, Director of Employment Standards (Respondent) *(Withdrawn)*

**4198-10-ES:** Thirukailasanathan Sivanadiyar (Applicant) v. Pickle Barrel (Vaughan) Limited o/a Pickle Barrel Restaurant (The), Director of Employment Standards (Respondent) (Endorsed Settlement)

**4208-10-ES**: Elie Koussa (Applicant) v. RGU Management Inc. and MJA Management Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4216-10-ES:** 465291 Ontario Inc. operating as Midas Automotive (Applicant) v. Ryan Hammer and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4221-10-ES:** Lawrence Michael Hayes (Applicant) v. Herby Enterprises Limited, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4236-10-ES:** Daniel J. McCluskey (Applicant) v. Design Group Staffing Inc. o/a Inteqna and, Director of Employment Standards (Respondent) *(Withdrawn)*

**4247-10-ES:** Hill Royan Bruce o/a 3 Mainsha Restaurant (Applicant) v. Diana Lewis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4248-10-ES:** Hill Royan Bruce o/a 3 Mainsha Restaurant (Applicant) v. Wrann Gould and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4265-10-ES:** Aminullah Abdul Haq (Applicant) v. Aplus Star Plumbing Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**4293-10-ES:** Aman Ullah (Applicant) v. Centennial Towers (65) Holdings Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4296-10-ES:** Health Trans Services Inc. (Applicant) v. Phillippe D. Lessard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4300-10-ES:** Tony Baggetta, a Director of Magnolia Blu Enterprises Inc. (Applicant) v. John Pirri and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4322-10-ES:** Suter Design Build Ltd. (Applicant) v. Al Rosseel and, Director of Employment Standards (Respondent) *(Terminated)*

**4332-10-ES:** Mark Schumann (Applicant) v. Freure Property Management Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0012-11-ES:** Stacey Sterling (Applicant) v. Tokai Rika Co., Ltd. and Tokai Rika Canada Limited o/a Quality Safety Systems Canada and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0080-11-ES:** Tina Bajac (Applicant) v. Fitness 360 Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0160-11-ES:** Northern Reflections Ltd. (Applicant) v. Victoria Pengelly, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0206-11-ES:** Cana-Datum Moulds Ltd. (Applicant) v. Morris Daley, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0232-11-ES:** Henrique Sebastiao (Applicant) v. Sheridan Nurseries Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0233-11-ES:** Madeline Marshall (Applicant) v. Pritlove Holdings Limited o/a Tim Horton's and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0243-11-ES:** David Ghir (Applicant) v. Interlinc Direct Corporation, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0322-11-ES:** Mykolyn Enterprises Limited o/a MM Products (Applicant) v. Daniel Smythe, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0338-11-ES:** Serna Viernes (Applicant) v. Ontario Lottery and Gaming Corporation - Woodbine and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0344-11-ES:** Continental Currency Exchange Inc. (Applicant) v. Elena Jolliffe and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0350-11-ES:** Viralabs Incorporated (Applicant) v. Vishaal Saujani and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0361-11-ES:** Tumbler Automotive Supply Ltd. o/a Tumbler Automotive Supply/ Auto-One (Applicant) v. Glen Godwin, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0382-11-ES:** 2214637 Ontario Inc. o/a Marquee Rentals (Applicant) v. Dennis Bissonnette and, Director of Employment Standards (Respondent) *(Terminated)*

**0383-11-ES:** Rose Marie Bray (Applicant) v. Mark Harrison and Danny Duchesne o/a The New Dundee Emporium and, Director of Employment Standards (Respondent) *(Dismissed)*

**0433-11-ES:** Inderjit Sharma (Applicant) v. Modi Transport Ltd., and Director of Employment Standards (Respondent) *(Terminated)*

**0443-11-ES:** Evelyn Dale (Applicant) v. Royal Canadian Legion Branch 624 and, Director of Employment Standards (Respondent) *(Terminated)*

**0468-11-ES:** Jazy Management Inc. (Applicant) v. Wayne Coyle and, Director of Employment Standards (Respondent) *(Terminated)*

**0469-11-ES:** Elvia Penate (Applicant) v. Ezze Sewing Ltd and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0471-11-ES:** Ugur Akdogan o/a Meet Point Restaurant & Grill House Inc. (Applicant) v. Cihan Demir and, Director of Employment Standards (Respondent) *(Terminated)*

**0473-11-ES:** Riclineton Management Services Limited (Applicant) v. Gale Gagnier, Director of Employment Standards (Respondent) *(Terminated)*

**0483-11-ES:** Ez-Build Systems Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

**0489-11-ES:** 1147076 Ontario Ltd. operating as Jay's Truck and Trailer (Applicant) v. Derek Dietz and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0497-11-ES; 0498-11-ES:** 2218783 Ontario Inc. operating as Downsview Cleaners (Applicant) v. Shu Zhen Wu and, Director of Employment Standards (Respondent) *(Terminated)*

**0500-11-ES:** Anne Zuefle (Applicant) v. Elite Technologies Video Data Security Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

**0543-11-ES:** Excel Collection Services Limited (Applicant) v. Giselle Cunningham and, Director of Employment Standards (Respondent) *(Terminated)*

**0550-11-ES:** Andrew John Zeman (Applicant) v. 1728078 Ontario Inc o/a Delicious Steak House, Director of Employment Standards (Respondent) *(Terminated)*

**0554-11-ES:** 1746889 Ontario Ltd. operating as Lincoln Motor Inn Fallsview (Applicant) v. Ashley Sealey and, Director of Employment Standards (Respondent) *(Terminated)*

**0598-11-ES:** RDI Chemical Corporation operating as RDI Chemcial Corp. (Applicant) v. Dawn Wetzler and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0657-11-ES:** 1752305 Ontario Inc. operating as 18 Wheeler Truck Stop (Applicant) v. Hunter Brooks and, Director of Employment Standards (Respondent) *(Terminated)*

**0671-11-ES:** Susan Saunderson (Applicant) v. Rogers Wireless Inc. Rogers Sans-Fil Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0672-11-ES:** Tien Van Nguyen (Applicant) v. 763669 Ontario Limited o/a Laser Tech Abrasives Ltd. and, Director of Employment Standards (Respondent) *(Terminated)*

**0707-11-ES:** 2216456 Ontario Inc. o/a The Big Smoke Barbecue (Applicant) v. Adrian Bell and, Director of Employment Standards (Respondent) *(Dismissed)*

**0718-11-ES:** The Ultimate Potato Company Ltd. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

**0771-11-ES:** Royan Warner, a director of VE Collective Inc. (Applicant) v. Yucheng Ning and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0773-11-ES:** George E. Morgan (Applicant) v. Laurentian University of Sudbury and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0776-11-ES:** Jeffrey Jordan (Applicant) v. Stella Restaurant Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0827-11-ES:** Betty Jane Schroth (Applicant) v. Collingwood Nursing Home Limited and, Director of Employment Standards (Respondent) *(Terminated)*

## APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

**1065-08-HS; 1142-08-HS ; 1232-08-HS; 1958-09-HS:** Hardwall Construction Ltd. (Applicant) v. Universal Workers Union L.I.U.N.A. Local 183, The International Union of Operating Engineers, Local 793, Neil Martin, Inspector, The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondent); Riverton Forming Incorporated (Applicant) v. Universal Workers Union L.I.U.N.A. Local 183, The International Union of Operating Engineers, Local 793, Guy Costa, Inspector, The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondent) ; Aviance Forming Ltd. (Applicant) v. The Carpenter District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, The International Union of Operating Engineers, Local 793, Universal Workers Union L.I.U.N.A. Local 183, Neil Martin, Inspector (Respondent); Avenue Building Corporation (Applicant) v. The International Union of Operating Engineers, Local 793, Mr. Jeff Lomer, Inspector (Respondent) v. Universal Workers Union, L.I.U.N.A Local 183 (Intervener) *(Dismissed)*

**3515-10-HS:** CEP Local 320 (Applicant) v. Acco Brands Canada Inc. and, Carl Broughton, Inspector (Respondent) *(Withdrawn)*

**0935-11-HS:** Modern Crane Rentals (Applicant) v. International Union of Operating Engineers, Local 793, Steven Papple, Inspector (Respondent) *(Granted)*

## REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

**2616-10-M**: Service Employees International Union Local 1 Canada (Applicant) v. Victorian Order of Nurses for Canada - Ontario Branch (Respondent) *(Terminated)*

**0004-11-M:** Service Employees International Union, Local 1 Canada (Applicant) v. Canadian Red Cross Society - Community Health Services Ontario Zone (Respondent) *(Withdrawn)*

## APPEAL - PUBLIC SECTOR COMPENSATION RESTRAINT TO PROTECT PUBLIC SERVICES ACT, 2010

**3173-10-RB**: Varinder Dua et al (Applicant) v. London Health Sciences Centre,, St. Joseph's Health Centre and (Respondent) *(Granted)*

## PAY EQUITY ACT

**3270-10-PE:** A.G. Simpson Automotive Systems Inc. (Applicant) v. (Respondent) *(Granted)*

**0213-11-PE:** Pay Equity Office (Applicant) v. Inn 2 Stay Inc. cob as Holiday Inn Express, Toronto Airport Area (Respondent) *(Withdrawn)*

**0214-11-PE:** Pay Equity Office (Applicant) v. SNS Hotels Inc. cob as - Quality Inn & Suites Brantford formerly - Holiday Inn Brantford (Respondent) *(Withdrawn)*

## PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

**0269-11-PS:** Ontario Nurses' Association (Applicant) v. Services de santé de Chapleau Health Services,, Chapleau and District Family Health Team (Respondent) v. The Canadian Union of Public Employees and its Local 4108 (Intervener) *(Withdrawn)*

# APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**2945-09-ES:** Maria Derkach (Applicant) v. Sandra Palmisano and, Director of Employment Standards (Respondent) *(Dismissed)*

**0463-10-PE:** Pay Equity Commission (Applicant) v. Contact Creative Services Inc. (Respondent) *(Dismissed)*

**1569-10-G:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. 1000690 Ontario Inc. o/a Liza Homes (Respondent) (Disposition not available)

**2000-10-ES:** Marcelle Shayda (Applicant) v. Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs and, Director of Employment Standards (Respondent) *(Dismissed)*

**2180-10-ES; 2214-10-ES:** Suzanne Beauchamp (Applicant) v. DS Valihora Inc. and, Director of Employment Standards (Respondent); Kipp Baker (Applicant) v. DS Valihora Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3301-10-ES:** Linda Desmarais (Applicant) v. 7245947 Canada Inc. / Rumble Inn Tavern and, Director of Employment Standards (Respondent) *(Dismissed)*

**4304-10-ES:** Colin A. Adams (Applicant) v. Knoll North America Corp. and, Director of Employment Standards (Respondent) *(Terminated)*

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING AUGUST 2011

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**0079-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Ashgrove Interior Contracting Ltd. (Respondent)

Unit: "all painters and painters, apprentices in the employ of Ashgrove Interior Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, amd all painters and painters; apprentices in the employ of Ashgrove Interior Contracting Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the County of Dufferin excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**0782-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Modu-Loc Fence Rentals Ltd. (Respondent)

Unit: "all construction labourers in the employ of Modu-Loc Fence Rentals Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (2 employees in unit)

**4091-10-R:** Labourers' International Union of North America, Local 625 (Applicant) v. 1652472 Ontario Inc. o/a North Key Construction (Respondent)

Unit: "all construction labourers in the employ of 1652472 Ontario Inc. o/a North Key Construction in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (18 employees in unit)

**1353-11-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. 3Sixty General Contracting Inc. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of 3Sixty General Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of 3Sixty General Contracting Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**1483-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Canasoil Construction Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Canasoil Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Canasoil Construction Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**1495-11-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Sigma Power Group Inc. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Sigma Power Group Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Sigma Power Group Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1541-11-R:** Universal Workers Union Labourers' International Union of North America, Local 183 (Applicant) v. Majestic Marble Import Ltd. (Respondent)

Unit: "all construction employees in the employ of Majestic Marble Import Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**1557-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Earth Essentials Construction Corp. and/or, International Construction Products Corp. (Respondent)

Unit: "all construction labourers in the employ of Earth Essentials Construction Corp. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham in all sectors of the construction industry other than the industrial, commercial and institutional sector" (3 employees in unit)

**1605-11-R:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Ron Kirton Enterprises (Total Insulation) (Respondent)

Unit: "all journeymen and apprentice insulators and asbestos workers in the employ of Ron Kirton Enterprises (Total Insulation) in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice insulators and asbestos workers in the employ of Ron Kirton Enterprises (Total Insulation) in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1669-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. MCL Concrete Ltd. (Respondent)

Unit: "all construction labourers in the employ of MCL Concrete Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of MCL Concrete Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**1706-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Medeiros Brampton Construction Ltd. (Respondent)

Unit: "all construction labourers, journeymen and apprentice bricklayers, stonemasons, plasterers and improvers in the employ of Medeiros Brampton Construction Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**1714-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Geron Associates Limited (Respondent)

Unit: "all carpenters and carpenters¿ apprentices in the employ of Geron Associates Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters¿ apprentices in the employ of Geron Associates Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

## Bargaining Agents Certified Subsequent to Vote

**3200-10-R:** Canadian Union of Skilled Workers (Applicant) v. 1777686 Ontario Inc. o/a Request Solutions (Respondent) v. Millwright Regional Council of Ontario, Association of Millwrighting Contractors of Ontario Inc. (Intervener)

Unit: "all employees of 1777686 Ontario Inc. c.o.b. Request Solutions engaged as supplemental workers in the Province of Ontario, save and except office, sales and clerical staff, inspectors, managers and persons above the rank of manager" (6 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 24 |
| Number of persons who cast ballots | 17 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 16 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots segregated and not counted | 1 |

**1105-11-R:** Ontario Public Service Employees Union (Applicant) v. Religious Hospitallers of St. Joseph of the Hotel Dieu of Kingston (Respondent)

Unit: "all information technology employees of the Religious Hospitallers of St. Joseph of the Hotel Dieu of Kingston in Kingston, Ontario, save and except supervisors (and) persons above the rank of Supervisor and employees who have access to confidential information relating to labour relations" (4 employees in unit)*(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 4 |
| Number of persons who cast ballots | 4 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |

**1151-11-R:** Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Intercon Security Limited (Respondent)

Unit: "all employees of Intercon Security Limited assigned to 8000 Dixie Road., in the City of Brampton, save and except supervisors and persons above the rank of supervisor" (8 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 9 |
| Number of persons who cast ballots | 8 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 8 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 6 |
| Number of ballots marked against applicant | 2 |
| Number of ballots segregated and not counted | 0 |

**1169-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Hertz Canada Limited (Respondent)

Unit: "all elect to work regular trippers and elect to work lead regular trippers employed by Hertz Canada Limited - Rent-A-Car Division at 2 Convair Drive East, Toronto, Ontario, and who regularly trip vehicles out of 2 Convair Drive East, Toronto, Ontario, save and except supervisors, those above the rank of supervisor, terminal trippers and employees covered under subsisting collective agreements" (60 employees in unit) *(Having regard to the agreement of the parties.)*

**1252-11-R:** Brescia Faculty Association (Applicant) v. Brescia University College (Respondent)

Unit: "all faculty members employed by Brescia University College as tenured faculty, tenure stream faculty, and limited term and continuing term appointments, save and except contract faculty, part time faculty and administrators at the ranks of academic Dean Principal and higher." (37 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 84 |
| Number of persons who cast ballots | 35 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 22 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 12 |
| Number of segregated ballots cast by persons whose names do not appear on voters' | 1 |

| | |
|---|---|
| list | |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 22 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 13 |

**1308-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. Ukrainian Home for the Aged operating as Ivan Franko Home (Respondent)

Unit: "all employees of Ukrainian Home for the Aged operating as Ivan Franco Home in the City of Toronto, save and except managers and supervisors, persons above the rank of manager or supervisor, registered nurses, office and clerical employees" (80 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 72 |
| Number of persons who cast ballots | 60 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 60 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 57 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 0 |

**1391-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. Retirement Residences Operations (REIT) LP by its general partner Retirement Residences Genpar Inc. o/a Constitution Place Retirement Residence (Respondent)

Unit: "all employees of Constitution Place Retirement Residence located in the City of Mississauga, save and except managers, persons above the rank of manager, recreational/activities staff, office and clerical staff and maintenance staff" (31 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 35 |
| Number of persons who cast ballots | 28 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 27 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 25 |
| Number of ballots marked against applicant | 2 |
| Number of ballots segregated and not counted | 1 |

**1419-11-R:** Canadian Union of Public Employees (Applicant) v. Aramark Canada Ltd. (Respondent)

Unit: "all call centre associates employed by Aramark Canada Ltd. in the call service centre located in the City of Ottawa, save and except supervisors, persons above the rank of supervisor and any employees already represented by a union" (10 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 10 |
| Number of persons who cast ballots | 7 |
| Number of ballots excluding segregated ballots cast by persons whose names appear | 7 |

| | |
|---|---|
| on voter's list | |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 6 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**1453-11-R:** United Food & Commercial Workers, Local 206 (Applicant) v. Pearson Hospitality Inc. & Balu Holdings Inc. operating as Hilton Garden Inn Toronto / Brampton 2648 Steeles Avenue East, Brampton, ON L6S 6J9 (Respondent)

Unit: "all employees of Hilton Garden Inn Toronto / Brampton, located at 2648 Steeles Avenue East, Brampton, ON, save and except supervisors, persons above the rank of supervisor, front desk, office and clerical staff" (6 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 6 |
| Number of persons who cast ballots | 6 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 6 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1510-11-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Kingsway Arms Ottawa Inc. c.o.b. as Kingsway Arms-St. Joseph Manor (Respondent)

Unit: "all employees of Kingsway Arms Ottawa Inc. c.o.b. as Kingsway Arms-St. Joseph Manor, 1510 St Joseph Blvd., Orleans, save and except supervisors, persons above the rank of supervisor and reception" (52 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 54 |
| Number of persons who cast ballots | 42 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 42 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 41 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**1527-11-R:** Ontario Public Service Employees Union (Applicant) v. Grosvenor Partnership (No. 3) c.o.b. as Bonnie Brae Health Care Centre Ltd. (Respondent)

Unit: "all employees of Grosvenor Health Care Partnership (No. 3) operating as the Bonnie Brae Health Care Centre save and except supervisors, persons above the rank of supervisor, registered nurses, registered nurses with a temporary certificate, spiritual advisor, MDS-RAI Coordinator, Staff Educator and Office Manager" (106 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 108 |
| Number of persons who cast ballots | 66 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 64 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 59 |
| Number of ballots marked against applicant | 5 |
| Number of ballots segregated and not counted | 1 |

**1554-11-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Abibow Canada Inc. (Respondent)

Unit: "all employees of Abibow Canada Inc. employed in its Thunder Bay Sawmill in the City of Thunder Bay/Fort William First Nation Reserve save and except supervisors, persons above the rank of supervisor, office, sales and clerical staff, students employed during the school vacation period and employees for whom any other trade union including the applicant, holds bargaining rights as of August 5th, 2011" (147 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 146 |
| Number of persons who cast ballots | 138 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 138 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 70 |
| Number of ballots marked against applicant | 68 |
| Number of ballots segregated and not counted | 0 |

## Applications for Certification Dismissed Without Vote

**1694-11-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital Full-Time Clerical (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

**1710-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. St. Helen's Meat Packers Ltd. (Respondent)

## Applications for Certification Dismissed Subsequent to Vote

**1975-09-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Conterra Restoration Ltd. (Respondent)

Unit: "all construction labourers in the employ of Conterra Restoration Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (32 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 37 |
| Number of persons who cast ballots | 25 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 25 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 11 |
| Number of ballots marked against applicant | 14 |
| Number of ballots segregated and not counted | 0 |

**3901-10-R:** Labourers' International Union of North America, Local 625 (Applicant) v. 1223254 Ontario Inc. o/a Sewer Maintenance Services (Respondent)

Unit: "all employees of 1223254 Ontario Inc. o/a Sewer Maintenance Services working in and out of the township of Leamington, save and except supervisors, persons above the rank of supervisor, office, sales and clerical staff." (5 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 8 |
| Number of persons who cast ballots | 8 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 2 |

**0850-11-R:** Teamsters Local Union 847, Laundry and Linen Drivers and Industrial Workers, Film and Television Production, The Province of Ontario, Canada (Applicant) v. Maple Leaf Sports & Entertainment Ltd. (Respondent)

Unit: "all employees of MLSE at the Real Sports Bar & Grill, Maple Leaf Square, 15 York Street, Unit A, Toronto, and e1 1even Restaurant, 15 York Street, Unit C, Toronto, save and except foremen, and those above the rank of foreman, sales, office and clerical staff, security guards, students employed during the school vacation period, and persons covered by a subsisting collective agreement¿. *Clarity Note:* For the purpose of clarity the bargaining unit appliesto hostesses." (38 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 41 |
| Number of persons who cast ballots | 10 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 10 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked against applicant | 5 |
| Number of ballots segregated and not counted | 0 |

### Applications for Certification Withdrawn

**2613-09-R:** Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Artistic General Contractors Limited c.o.b. as Terranova Drywall & Acoustics (Respondent) v. Ivan Alexy et al (Intervener)

**0329-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. August Contracting Ltd. (Respondent)

**1111-11-R:** Canadian Union of Public Employees (Applicant) v. Town of Niagara-on-the-Lake (Respondent) v. The Employees Bargaining Group (Intervener)

**1429-11-R:** Canadian Union of Public Employees (Applicant) v. Compass Group Canada (Respondent)

**1560-11-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Kawneer Company Canada Limited (Respondent)

**1569-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Authentech Communications Canada Inc. (Respondent)

**1656-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. MCL Concrete Ltd. (Respondent)

**1729-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. J & A Cleaning Solutions Ltd. (Respondent)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**2940-10-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Napa Valley Trim Inc. and, Jam Finish Carpentry Inc. (Respondent) *(Granted)*

**3148-10-R:** Millwright Regional Council of Ontario on Its own behalf and on behalf of its Affiliated Locals (Applicant) v. 1015037 Ontario Inc. c.o.b. Maintenance Plus and, 1777686 Ontario Inc. c.o.b. Request Solutions (Respondent) v. Association of Millwrighting Contractors of Ontario Inc. (Intervener) *(Terminated)*

**1394-11-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Mistyk Welding & Fabrication Ltd., Mistyk Metals Inc., 2216855 Ontario Inc. o/a Airon Steels Inc. (Respondent) *(Granted)*

**1446-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wild Wing Restaurants Inc., S.W. Hospitality Inc. (Respondent) *(Endorsed Settlement)*

## SALE OF A BUSINESS

**2940-10-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Napa Valley Trim Inc. and, Jam Finish Carpentry Inc. (Respondent) *(Granted)*

**3148-10-R:** Millwright Regional Council of Ontario on Its own behalf and on behalf of its Affiliated Locals (Applicant) v. 1015037 Ontario Inc. c.o.b. Maintenance Plus and, 1777686 Ontario Inc. c.o.b. Request Solutions (Respondent) v. Association of Millwrighting Contractors of Ontario Inc. (Intervener) *(Terminated)*

**1394-11-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Mistyk Welding & Fabrication Ltd., Mistyk Metals Inc., 2216855 Ontario Inc. o/a Airon Steels Inc. (Respondent) *(Granted)*

**1446-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wild Wing Restaurants Inc., S.W. Hospitality Inc. (Respondent) *(Endorsed Settlement)*

## SUCCESSOR STATUS

**1414-11-R:** United Food and Commercial Workers Canada Locals 175 & 633 Applicant) v. United Food And Commercial Workers Canada, Local 1000A, Green Grove Foods Corporation (formerly Power Packaging) (Respondent) *(Granted)*

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0291-10-R:** Alvin Reid (Applicant) v. Universal Workers Union, L.I.U.N.A. Local 183 (Respondent) v. 2125570 Ontario Inc. o/a Regal Craft Homes, Hush Homes Inc. o/a Hush Communities (HHI/HC) (Intervener) *(Granted)*

Unit: "all of its own construction employees engaged in the on-site construction of all types of low-rise housing and their natural amenities up to the date of closing or date of occupancy, whichever occurs first, of said housing or part thereof while working in the County of Simcoe and in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and such other geographic areas to which this Agreement may apply to pursuant to Schedule A Article 8 and/or any other appendices save and except employees employed as non- working foreman, watchmen and engineering staff. Low-rise housing for the purposes of this Agreement shall mean non-elevatored housing of not more than three (3) storeys in height (basement plus three (3) storeys). For the purposes of clarity, both the Union and the Bureau agree that this Agreement includes on-site installation of panelized or pre-fabricated floor, wall and roof components." (3 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 3 |
| Number of persons who cast ballots | 3 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 8 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 1 |
| Number of ballots marked against respondent | 2 |

**3218-10-R:** Millwright Regional Council of Ontario on its own behalf and on behalf of its Affiliated Locals (Applicant) v. Canadian Union of Skilled Workers (Respondent) v. 1777686 Ontario Inc. c.o.b. Request Solutions (Intervener) *(Terminated)*

**1183-11-R:** Fatimah Zane (Applicant) v. The United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Respondent) v. Kensington Place Retirement Residence (Intervener) *(Withdrawn)*

Unit: "all employees of Kensington Place Retirement Residence in the City of Toronto, save and except supervisors and persons above the rank of supervisor and the Community Relations Manager." (47 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 53 |
| Number of persons who cast ballots | 38 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 23 |

| | |
|---|---|
| Number of segregated ballots cast by persons whose names appear on voter's list | 15 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 18 |
| Number of ballots marked against respondent | 5 |
| Number of ballots segregated and not counted | 15 |

**1501-11-R:** Topnotch Building Maintenance Ltd. staff at Casa Loma George Brown College (Applicant) v. Teamster Local Union 938 (Respondent) *(Terminated)*

**1544-11-R:** Robert Taylor & Petitioners (Applicant) v. National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada) and its Local 195 (Respondent) v. Rose City Ford Sales Ltd. (Intervener) *(Dismissed)*

Unit: "all employees of Rose City Ford Sales Ltd. in the City of Windsor, save and except supervisors, Tower Controllers, persons above the rank of supervisors, office & sales staff & students employed during the school vacation period." (33 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 33 |
| Number of persons who cast ballots | 32 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 31 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 23 |
| Number of ballots marked against respondent | 8 |
| Number of ballots segregated and not counted | 1 |

**1781-11-R:** Transportation Operators of First Student Canada, Barrie Division (Applicant) v. Teamsters Union Local 938 (Respondent) *(Withdrawn)*

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**1956-02-U; 2051-02-U; 2359-02-U; 2590-02-U:** Teamsters International Union, Local 847 (Applicant) v. Canadian Film and Television Production Association and, Helie Film Support Services, A division of 464296 Ontario Ltd., Directors Guild of Canada (Ontario) and Alan Goluboff and George Chapman and Manny Danelon and Peter Rowe and Michael Cates and Pamela Brand and Leah Bazian (Respondent) *(Dismissed)*; Cheyenne Support Services Inc. and, Boogey Man Locations (Applicant) v. Canadian Film and Television Production Association and, U.A.C. Productions Inc. and Lynn Mallay (Respondent) *(Terminated)*; Canadian Film and Television Production Association (Applicant) v. Teamsters International Union, Local 847, Gilbert Davis, Dick Camillucci, Daniel Green and, Cheyenne Support Services Inc. (Respondent) *(Terminated)*; Teamsters International Union, Local 847 (Applicant) v. National Solutions and Services Inc., 1449405 Ontario Inc. o/a Concepts International Film Support Services and, Bama-Alper Productions (Respondent) *(Terminated)*

**2298-08-U; 0831-09-U:** Sheet Metal Workers' International Association, Local 51 Roofing and Siding Members of Carpenters Local 27 Listed on Schedule "A" Attached (Applicant) v. Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) v. 413554 Ontario Limited c.o.b. as Chouinard Bros. Roofing (Intervener); 413554 Ontario Limited c.o.b. as Chouinard Bros. Roofing (Applicant) v. Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America, Trudel and Sons Roofing Ltd., Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Burnhamthorpe Roofing Co. Ltd. (1994), Jackson Roofing GTA Inc. (Intervener) *(Dismissed)*

**1055-09-U:** Norman Gordan, Willy Kwok Yung Au, Mario Raposo, Christopher De Cruz and Aliston Brewster (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), on behalf of USW, Local 1-9185 (Respondent) v. Canon Canada Inc. Business Solutions Division (Intervener) *(Dismissed)*

**2404-09-U:** Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. ASI Group Ltd. (Respondent) *(Withdrawn)*

**2922-09-U:** United Brotherhood of Carpenters and Joiners of America, Local Union 1256 (Applicant) v. United Brotherhood of Carpenters and Joiners of America (Respondent) *(Dismissed)*

**0380-10-U; 0622-11-U:** Brick and Allied Craft Union of Canada, Local 5 (Applicant) v. Bernardo Group Limited (formerly Bernardo Marble, Terrazzo & Tile Co. Ltd), Frank Baratta, Frank Baratta Jr., and, Brian Oliveira (Respondent); Brick and Allied Craft Union of Canada and Brick and Allied Craft Union of Canada, Local 5 (Applicant) v. Bernardo Group Limited, Frank Baratta, Frank Baratta Jr., Bob Geerts and Paul Carvalho (Respondent) *(Withdrawn)*

**0825-10-U:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Conterra Restoration Ltd. (Respondent) *(Withdrawn)*

**0878-10-U:** Davina Tolentino (Applicant) v. Teamsters Local Union 847 (Respondent) v. Maple Leaf Sports and Entertainment Ltd. (Intervener) *(Withdrawn)*

**1380-10-U:** Mohammad Mustaq (Applicant) v. UNITE HERE Local 75 (Respondent) v. Liverton Hotels International Ltd. o/a Metropolitan Hotel Toronto (Intervener) *(Dismissed)*

**1405-10-U:** Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taggart Realty Management Inc., Tamarack Development Corporation (Respondent) v. Christian Labour Association of Canada (Intervener) *(Dismissed)*

**1837-10-U:** United Food and Commercial Workers Canada Local 102 (Applicant) v. Burlington 2020 Lakeshore Inc. o/a Waterfront Hotel (Respondent) *(Withdrawn)*

**1878-10-U:** Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 (Applicant) v. Canada Bread Company, Limited (Respondent) *(Dismissed)*

**2906-10-U; 3568-10-U:** Godfred Kwaku Hiamey (Applicant) v. Association des enseignantes et des enseignants franco-ontariens (Respondent) v. Le Conseil scolaire de district catholique Centre- Sud (Intervener); Godfred Kwaku Hiamey (Applicant) v. Association des enseignantes et des enseignants franco-ontariens (Respondent) *(Dismissed)*

**3595-10-U:** Robert Martin, Ian Drouin and Donald Jacquot (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) v. Pittsburgh Glass Works, ULC Canada (Intervener) *(Dismissed)*

**3663-10-U:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. AAK Development Group Inc. (Respondent) *(Withdrawn)*

**3972-10-U:** Labourers' International Union of North America, Local 625 (Applicant) v. 1223254 Ontario Inc. o/a Sewer Maintenance and Thomas Mosey (Respondent) *(Withdrawn)*

**4050-10-U:** David D. Beaudoin (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 523 (Respondent) *(Dismissed)*

**4258-10-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Golden Cut Poultry Limited (Respondent) *(Withdrawn)*

**4271-10-U:** Ronald Whalen (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Respondent) v. E.S. Fox Limited (Intervener) *(Dismissed)*

**0485-11-U; 0486-11-U:** Daniel Holditch (Custodian of 101 Chapple Avenue and 345 St. George Ave.) (Applicant) v. The Corporation of the City of Sault Ste. Marie (Respondent); Daniel Holditch (Applicant) v. Canadian Union of Public Employees CUPE Local 67 (Respondent) *(Withdrawn)*

**0506-11-U:** Cheryl Gourley (Applicant) v. United Food and Commercial Workers International Union, Local 175 & 633 (Respondent) v. Picton Manor Nursing Home (Intervener) *(Withdrawn)*

**0625-11-U:** Jeffrey Reilly (Applicant) v. Canadian National Federation of Independent Unions (Respondent) v. Metro Toronto Convention Centre Corporation (Intervener) *(Withdrawn)*

**0823-11-U; 0842-11-U:** Dolores Schram (Applicant) v. National Automobile, Aerospace, Transportation, and, General Workers Union of Canada (CAW-Canada) and its Local 636 (Respondent) v. Woodstock General Hospital Trust (Intervener); Dolores Schram (Applicant) v. National Automobile, Aerospace, Transportation, and General Workers Union of Canada (CAW-Canada) and its Local 636 (Respondent) v. Woodstock General Hospital Trust (Intervener) *(Dismissed)*

**0887-11-U:** Bad Boy Furniture Warehouse Limited (Applicant) v. Jeff Sheriff (Respondent) *(Endorsed Settlement)*

**1092-11-U:** Teamsters Local Union 847, Laundry and Linen Drivers and Industrial Workers, Film and Television Production, the Province of Ontario, Canada (Applicant) v. Maple Leaf Sports & Entertainment Ltd. (Respondent) *(Withdrawn)*

**1296-11-U:** François Bélanger (Applicant) v. L'association des employées de la conférence des évêques catholiques du Canada (Respondent) v. Conférence des évêques catholiques du Canada (Intervener) *(Withdrawn)*

**1297-11-U:** Marchand Excavating Contractors Ltd (Applicant) v. Labourers' International Union of North America, Local 625 (Respondent) *(Withdrawn)*

**1334-11-U:** Canadian Union of Public Employees (Applicant) v. Blaisdale Montessori School (Respondent) *(Withdrawn)*

**1464-11-U:** Omnia Mohamed Refat (Applicant) v. Islamic School of Hamilton (ISH) part of Muslim Association of Hamilton (MAH) (Respondent) *(Dismissed)*

**1591-11-U:** Robert Miceli (Applicant) v. CAW Local 414 (Respondent) *(Dismissed)*

## APPLICATIONS FOR CONSENT TO PROSECUTE

**0349-11-U:** Canadian Auto Workers Local 222 (Applicant) v. General Motors of Canada Limited (Respondent) *(Dismissed)*

## JURISDICTIONAL DISPUTES

**2153-08-JD:** The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) (Intervener) *(Withdrawn)*

**2432-09-JD:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Canadian Union of Skilled Workers and, Murray's Electrical & Mechanical Contractors Corp. (Respondent) v. Electrical Power Systems Construction Association (Intervener) *(Granted)*

**2526-09-JD:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and its Local 721 (Applicant) v. Aecon Industrial, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Respondent) v. Electrical Power Systems Construction Association (Intervener) *(Dismissed)*

**2584-10-JD:** The Crown in Right of Ontario as represented by the Ministry of Government and Consumer Services (Applicant) v. Ontario Public Service Employees Union (Respondent) v. AMAPCEO (Intervener) *(Withdrawn)*

**3145-10-JD; 0862-11-JD:** Sheet Metal Workers' International Association, Local 47 (Applicant) v. Les Toitures Raymond et Associés Inc. (Raymond and Associates Roofing Inc.), United Brotherhood of Carpenters and Joiners of America, Local 93 (Respondent); Sheet Metal Workers' International Association, Local 47 (Applicant) v. Les Toitures Raymond et Associés Inc. (Raymond and Associates Roofing Inc.), United Brotherhood of Carpenters and Joiners of America, Local 93 (Respondent) *(Withdrawn)*

**3707-10-JD:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. Bruce Power LP, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736, United Brotherhood of Carpenters and Joiners of America, Local 1592 and, Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**1435-11-JD:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Black & McDonald Ltd., IBEW Electrical Power Council of Ontario, International Brotherhood of Electrical Workers, Local 894, Millwrights Local 2309 (Respondent) *(Withdrawn)*

## EMPLOYEE STATUS

**4197-10-M:** Communications, Energy and Paperworkers Union of Canada, Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. Metroland Media Group (Respondent) *(Terminated)*

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**3462-08-OH:** Ron Slessor (Applicant) v. Anic Utility Services, Inc. (Respondent) *(Dismissed)*

**1625-10-OH:** Julie Carter (Applicant) v. Barber-Collins Security Services Ltd. and, TG Minto Corporation (Respondent) *(Withdrawn)*

**2943-10-OH:** Nicole P. Skinner (Applicant) v. Value Village Stores Inc. (Respondent) *(Withdrawn)*

**3129-10-OH:** Chad McLeod (Applicant) v. Vale Inco Limited, Claire Parkinson, Daniel Sequin and, Jackson Young (Respondent) *(Withdrawn)*

**3662-10-OH:** Jordan Dority-Steven (Applicant) v. Fleming Colleges' Steele Centre Pub (Respondent) *(Dismissed)*

**1502-11-OH:** Bela Palinkas (Applicant) v. Mobile Support Service (Respondent) *(Terminated)*

**1615-11-OH:** Michael Eady (Applicant) v. Akitt, Swanson & Pearce Architects (Respondent) *(Withdrawn)*

## CONSTRUCTION INDUSTRY GRIEVANCES

**2280-Y6-G; 2853-06-G** Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Powerline Plus Ltd. (Respondent); Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Powerline Plus (Respondent) *(Withdrawn)*

**4032-Y6-G:** International Union of Operating Engineers, Local 793 (Applicant) v. E. & E. Seegmiller Limited (Respondent) *(Terminated)*

**1013-07-G; 3588-07-G; 1912-08-G; 2140-08-G; 2147-08-G; 2527-08-G; 1410-09-G; 1639-09-G; 1640-09-G; 1641-09-G; 1642-09-G; 1643-09-G; 1644-09-G; 1645-09-G; 3304-10-G:** Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Darlington-Bill Gearing Guard House) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering Crew Trailer) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering - Plant Fire Alarm Systems) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering - Inverter Battery Rooms) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering - Teledosimetry Installation) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering - Units 1&4 Pressure Transmitters) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Temporary Power) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (New Rectifier Installation) (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering - PA Speaker Installation) (Respondent) *(Terminated)*

**0216-08-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lancia Brothers Carpenters Limited (Respondent) *(Withdrawn)*

**1591-08-G:** Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Respondent) *(Terminated)*

**2732-09-G; 0726-11-G:** Sheet Metal Workers' International Association, Local 47 (Applicant) v. Les Toitures Raymond et Associés Inc. (Raymond and Associates Roofing Inc.) (Respondent) *(Withdrawn)*

**3801-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. 1229060 Ontario Inc. c.o.b. as Lee & Lehmann Plumbing and Heating and Lee & Lehmann Plumbing and Heating Limited (Respondent) *(Dismissed)*

**3826-09-G:** Quality Control Council of Canada (Applicant) v. Axiom NDT Corporation (Respondent) *(Withdrawn)*

**1366-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Star Concrete Pumping Inc. (Respondent) *(Withdrawn)*

**2023-10-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Alfredo Naclerio (Respondent) *(Withdrawn)*

**3699-10-G:** Sheet Metal Workers' International Association Local Union No. 47 (Applicant) v. Aerodynamics & Associates Testing Services Ltd. (Respondent) *(Endorsed Settlement)*

**3700-10-G:** The International Union of Painters and Allied Trades, Local Union 200 (Applicant) v. Le Groupe P.F. Brisson Peinture Inc. (Respondent) *(Endorsed Settlement)*

**0221-11-G:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Hydro One Inc., Electrical Power Systems Construction Association (Respondent) *(Dismissed)*

**0251-11-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Terrasan Environmental Solutions Inc. (Respondent) *(Dismissed)*

**0556-11-G:** Canadian Union of Skilled Workers (Applicant) v. BRUCE POWER LP (Respondent) *(Endorsed Settlement)*

**0562-11-G:** Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Respondent) *(Withdrawn)*

**0565-11-G:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Active Insulation Inc. (Respondent) *(Endorsed Settlement)*

**0806-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Sutherland-Schultz Inc. (Respondent) *(Withdrawn)*

**0897-11-G:** Operative Plasterers' and Cement Masons International Association of the United States and Canada Local Union No. 124 (Applicant) v. 2100943 Ontario Inc. operating as ACOUSTIQUE SM (Respondent) *(Granted)*

**1199-11-G:** Labourers' International Union of North America, Local 247 (Applicant) v. 548493 Ontario Limited o/a Peter Fabbro Mason Contractor (Respondent) *(Withdrawn)*

**1277-11-G:** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 837 (Applicant) v. A & B Rail Services Ltd. (Respondent) *(Withdrawn)*

**1279-11-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Mose Drywall Systems Ltd. (Respondent) *(Endorsed Settlement)*

**1303-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Cambridge Rigging Central Limited (Respondent) *(Terminated)*

**1315-11-G:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Upper Canada Insulation Services Ltd. (Respondent) *(Endorsed Settlement)*

**1340-11-G:** Labourers' International Union of North America, Local 527 (Applicant) v. 924241 Ontario Inc. o/a Romeo & Romeo Concrete Finishing (Respondent) *(Endorsed Settlement)*

**1358-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Discovery Electric Ontario Limited (Respondent) *(Endorsed Settlement)*

**1366-11-G:** International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Procon Niagara (Respondent) *(Withdrawn)*

**1380-11-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Claude Edward Copeland and, Jason Richard Labre c.o.b. as Instal Contracting (Respondent) *(Endorsed Settlement)*

**1405-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping and Excavation Ltd. (Respondent) *(Granted)*

**1410-11-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Taydan Glass Inc. (Respondent) *(Granted)*

**1415-11-G:** Canadian Union of Skilled Workers (Applicant) v. Valard Construction LP (Respondent) *(Withdrawn)*

**1425-11-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Mahmoud Khader Jaradat c.o.b. as MJ Concrete Specialists (Respondent) *(Endorsed Settlement)*

**1447-11-G:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wild Wing Restaurants Inc., S.W. Hospitality Inc. (Respondent) *(Endorsed Settlement)*

**1454-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. AC Plus Inc. (Respondent) *(Granted)*

**1477-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Paul Brown & Son Excavating Ltd. (Respondent) *(Withdrawn)*

**1487-11-G:** Carpenters District Council of Ontario, Local 93 (Applicant) v. Van Horne Construction Limited (Respondent) *(Withdrawn)*

**1530-11-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Total Contract Glazing Inc. (Respondent) *(Granted)*

**1558-11-G:** The Carpenters' District Council of Ontario, Local Union 93 (Applicant) v. A/T Firestop Solutions Inc. (Respondent) *(Endorsed Settlement)*

**1568-11-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Welsh Glassworks Inc. (Respondent) *(Granted)*

**1573-11-G:** Labourers' International Union of North America, Local 493 (Applicant) v. Camino Construction Inc. (Respondent) *(Terminated)*

**1579-11-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Miller Refrigeration & Air Conditioning (Respondent) *(Granted)*

**1590-11-G:** The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. Taydan Glass Inc. (Respondent) *(Granted)*

**1608-11-G:** International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Mendler Electric Inc. (Respondent) *(Endorsed Settlement)*

**1623-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Eltec Group Inc. (Respondent) *(Endorsed Settlement)*

**1633-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Multiwide Mechanical Contractors Ltd. (Respondent) *(Granted)*

**1636-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Fincom Inc. (Respondent) *(Withdrawn)*

**1638-11-G; 1639-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Royal Windsor Mechanical Inc. (Respondent) *(Granted)*

**1648-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Kevin Dickie Electric Inc. (Respondent) *(Withdrawn)*

**1712-11-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Norlon Builders London Limited (Respondent) *(Withdrawn)*

**1723-11-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. O & P Carpentry Ltd. (Respondent) *(Withdrawn)*

## APPEALS - EMPLOYMENT STANDARDS ACT

**1303-10-ES:** Michael R. Basen A Director of A.L.C. Manufacturing Inc. (Applicant) v. Tanis MacDonald, Igor Meleniuk, Rafique Miraj, Wlodzimier Starecki, Sheetal Gajri, Piotr Ospelt, Janina Tyrala, Fernando Pabillar, Jayanta Mukherjee, Momir Petkovic, Manjit Sandhu, Enrique Bulosan, Edgardo Cabalquinto, Ray Purchase, Ricardo Seprio, Zbiginiew Toczek, Director of Employment Standards (Respondent) *(Dismissed)*

**1403-10-ES:** Najeef (Jeff) Sheriff (Applicant) v. Bad Boy Furniture Warehouse Limited o/a Lastman's Bad Boy Furniture and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1585-10-ES:** Storburn Construction Ltd. (Applicant) v. Josh Jones and, Director of Employment Standards (Respondent) *(Dismissed)*

**1690-10-ES:** 1118741 Ontario Limited o/a Irpinia Kitchens (Applicant) v. Damodar Dookhie, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1883-10-ES:** Kenneth M. Smith (Applicant) v. Commonwealth Plywood Co. Ltd./Commonwealth Plywood Cie Ltee. and, Director of Employment Standards (Respondent) *(Dismissed)*

**2452-10-ES:** MN Holdings Ltd. and Great Pacific Enterprises Inc. o/a Prologix Distribution Services (Applicant) v. Donovan Miller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2674-10-ES:** Sartino's Food Company Limited o/a Verona Restaurant (Applicant) v. Edward Shatz, Director of Employment Standards (Respondent) *(Granted)*

**2825-10-ES:** Clive H. Preddie, a Director of Shooters Sports Bar Inc. (Applicant) v. Alana Sprague and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3004-10-ES:** Tarsem Lal Ladhar (Applicant) v. DKL Security Service Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3072-10-ES:** Kanya Chaivat (Applicant) v. Western Inventory Service Ltd./Western Service D'Inventaire Ltee o/a WIS International and, Director of Employment Standards (Respondent) *(Withdrawn)*

**3116-10-ES:** 137077 Canada Inc. o/a Handyman Personnel Industrial Division (Applicant) v. Jonathan Sullivan and, Director of Employment Standards (Respondent) *(Dismissed)*

**3130-10-ES:** Stanislaw Matyjaszczyk (Applicant) v. Vinyl Window Designs Ltd., David Snell Building Services, and Director of Employment Standards (Respondent) *(Terminated)*

**3160-10-ES:** 137077 Canada Inc. o/a Handyman Personnel Industrial Division (Applicant) v. Christian C. V. Villeneuve and, Director of Employment Standards (Respondent) *(Dismissed)*

**3269-10-ES:** Priyance Hospitality Inc. o/a Radisson Plaza Mississauga Toronto Airport (Applicant) v. Rosita Pandya and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3290-10-ES:** Nikki's Roadhouse Inc. (Applicant) v. Philip Shalley and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3542-10-ES:** ABC Ambassador Taxi Services Inc. (Applicant) v. Ronald Shortt and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3598-10-ES:** Rose "N" Designers Hair Studio (Applicant) v. Therissa J. Van Midde and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3692-10-ES:** Sebert Facey (Applicant) v. Gracious Living Corporation and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3771-10-ES; 3772-10-ES:** 1011792 Ontario Inc. o/a Red Beard's Sports (Applicant) v. Travis Grixti and, Director of Employment Standards (Respondent); 1011792 Ontario Inc. o/a Red Beard's Sports (Applicant) v. Ryan Brown and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3849-10-ES:** Staples Canada Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Withdrawn)*

**3892-10-ES:** C & G Enterprises (Applicant) v. Alexander Stewart and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3918-10-ES:** Benedetto Scipione (Applicant) v. Sutherland-Schultz Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

**3982-10-ES:** Warehouse One Clothing Ltd. (Applicant) v. Jennifer Richarson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4029-10-ES:** 1366490 Ontario Ltd. operating as The Hunters Horn (Applicant) v. Jesse-Jo Hawkins and, Director of Employment Standards (Respondent) *(Dismissed)*

**4041-10-ES:** Christopher Yee Drugs Ltd. operating as Shoppers Drug Mart #508 (Applicant) v. Veronica Chhabra and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4077-10-ES:** Nymity Inc. (Applicant) v. Erin Gano and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4135-10-ES:** Pat Rocca a Director of Bender Engineered Concrete Solutions Inc. (Applicant) v. Robert Chandler, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4211-10-ES:** Agyemang Barkwah Bonsu (Applicant) v. La Crème Style Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**4220-10-ES:** Tesoro Windows & Doors Inc. (Applicant) v. David Ducsharm and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4244-10-ES:** Moawia Wahab, a director of Moawia (Mario) Wahab cob as SCI Maintenance Services o/a SCI Maintenance (Applicant) v. James Bell and, Director of Employment Standards (Respondent) *(Granted)*

**4315-10-ES:** 1489495 Ontario Inc o/a Flat Iron Grill (Applicant) v. Christine Travis, Director of Employment Standards (Respondent) *(Dismissed)*

**0057-11-ES:** Northern Reflections Ltd. (Applicant) v. Wilma Steel, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0085-11-ES:** Welland Nissan Ltd. (Applicant) v. Shane Weasner and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0115-11-ES:** Total Electric Supply Limited operating as Torbram Electrical Supply (Applicant) v. Jason Raffoul and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0280-11-ES:** Bruce Scott (Applicant) v. Bradwick Property Management Services Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0319-11-ES:** Jeanna Stubbert (Applicant) v. Altis Human Resources (Ottawa) Inc. o/a Altis Specialized Professional Resources, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0352-11-ES:** Hibag I. Haibeh (Applicant) v. Cetero Research and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0356-11-ES:** Rose Anne Carron (Applicant) v. Cara Operations Limited/Entreprises Cara Limitee operating as Kelsey's Restaurants and, Director of Employment Standards (Respondent) *(Terminated)*

**0360-11-ES:** 2069098 Ontario Inc. operating as Yorkdale Ford Lincoln Sales Limited (Applicant) v. Les Iharosy and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0376-11-ES:** 1823405 Ontario Ltd. operating as Country Style Bistro Deli (Applicant) v. Grace Cleofe and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0395-11-ES:** Sparkles Cleaning Services Ltd. (Applicant) v. Janeen Tindale and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0398-11-ES:** Infoempire Inc. (Applicant) v. Alina Hurynovich and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0399-11-ES:** London Health Sciences Foundation (Applicant) v. Holly Doty and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0400-11-ES:** London Health Sciences Foundation (Applicant) v. Holly Doty and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0424-11-ES:** Maurizio Barbieri, a Director of Bio Bake Inc. (Applicant) v. Renier Boy Calixtro, Nita Stephen, Norita Mangalindan, Edita Carreon, Adrienne J. Panis, Saeid Andalibimahm, Grace Cabral, Samad Mojab and, Director of Employment Standards (Respondent) *(Terminated)*

**0444-11-ES:** Toronto College of Technology Inc. (Applicant) v. Bisht Naveen and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0474-11-ES:** Colalillo Automotive Services Limited (Applicant) v. Charlie Nguyen and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0568-11-ES:** Yudvir Sandill (Applicant) v. Richa Enterprises Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*
**0611-11-ES:** Skyview Realty Ltd. (Applicant) v. Diana Cheng, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0613-11-ES:** 1707815 Ontario Inc. o/a Thornbury Clear Choice Pool and Spa Centre Inc. (Applicant) v. Garret Moy and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0626-11-ES:** QCL-Quality Compliance Laboratories Inc (Applicant) v. Li Liu and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0652-11-ES:** Phoenix/EDT Inc. (Applicant) v. Marcelo Biag and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0674-11-ES:** Adam Greenland (Applicant) v. Owasco Inc. o/a Owasco Audi and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0675-11-ES:** Bibi Kodija Persaud (Applicant) v. Archway Canada Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0709-11-ES:** Richard Toby (Applicant) v. Fedsec Corporation o/a Federal Security Agency and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0736-11-ES:** The Waza Group (Applicant) v. Jelani Johnson, Director of Employment Standards (Respondent) *(Withdrawn)*

**0753-11-ES:** Michael Sproul (Applicant) v. Telephone City Aggregates Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0765-11-ES:** Auto House Honda (Applicant) v. Ashley Veness, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0767-11-ES:** Rosemary Mifsud (Applicant) v. 341822 Ontario Inc. o/a Maynard Nursing Home and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0770-11-ES:** Hallmark Housekeeping Services Inc. (Applicant) v. Colin Smith and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0808-11-ES:** FEDSEC Corporation (Applicant) v. Graham Chamberlain and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0829-11-ES:** MWC Web Learning Systems Inc. (Applicant) v. Ana Tirolese and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0857-11-ES:** Melissa Molema (Applicant) v. Myka Designs Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

**0903-11-ES:** Kelly Lynn Balcomb (Applicant) v. Trillium Balsa Ltd and, Director of Employment Standards (Respondent) *(Terminated)*

**0927-11-ES:** Maple Drive Holdings Inc. operating as Crabby Joes Tap and Grill (Applicant) v. Reena Steffler and, Director of Employment Standards (Respondent) *(Terminated)*

**0953-11-ES:** Casey's Propane Inc. (Applicant) v. Douglas Bonner and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0966-11-ES:** Canada-Wide Dental Supplies Inc. 1630141 o/a Canada Wide Dental Supplies Inc. (Applicant) v. Steven Popadic and, Director of Employment Standards (Respondent) *(Dismissed)*

**0980-11-ES:** Christin K. Tully (Applicant) v. National Post Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0984-11-ES:** Robert Wappel, a Director of 1130687 Ontario Limited o/a Imperial Jade Chinese Cuisine (Applicant) v. Pui Chuen Li, Ho Zhong Pang, Jian Lin, Guo Quan Wang, Xian Ren Li and, Director of Employment Standards (Respondent) *(Granted)*

**0997-11-ES:** Richard L. Rand a Director of Rand General Contractors Inc. o/a Rand General Contractors (Applicant) v. Robert Fuller and, Director of Employment Standards (Respondent) *(Terminated)*

**1009-11-ES:** Rona Home and Garden (Applicant) v. Shannon Nicol and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1012-11-ES:** Herbert Chambers, a director of 1215223 Ontario Ltd. o/a Chambers Family Farm (Applicant) v. Elizabeth Shannon and, Director of Employment Standards (Respondent) *(Terminated)*

**1072-11-ES:** Neinstein Partners Chartered Accountants LLP (Applicant) v. Tsz Man Tang, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1102-11-ES:** Kenworth Toronto Ltd. (Applicant) v. Kevin Anderson and, Director of Employment Standards (Respondent) *(Dismissed)*

**1148-11-ES:** Arlene Estrella (Applicant) v. In Touch Retirement Living for Vegetarians/Vegan Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

**1214-11-ES:** Securitas Canada Limited/Securitas Canada Limitee operating as Securitas Canada (Applicant) v. Phillip Gies and, Director of Employment Standards (Respondent) *(Terminated)*

**1244-11-ES:** Ernest J. Curtis (Applicant) v. MBRGR T1 Inc., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1259-11-ES:** Professional Property Management Inc. (Applicant) v. Mary Cowen and, Director of Employment Standards (Respondent) *(Terminated)*

**1265-11-ES:** Meera Bradshaw (Applicant) v. Weston Bakeries Limited/Boulangeries Weston Limitee and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1269-11-ES:** Angel P. Sanchez Lozano (Applicant) v. 576195 Ontario Limited o/a Wiseman Export and, Director of Employment Standards (Respondent) *(Dismissed)*

**1284-11-ES:** Globest Immigration Inc. (Applicant) v. Zeinab Roosta and, Director of Employment Standards (Respondent) *(Dismissed)*

**1286-11-ES:** Meriam S. Gabin (Applicant) v. Fatima Somani and Alim Somani and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1289-11-ES:** Louis Chandler and Cathy Ross o/a The Jazzbah (Applicant) v. Darren Summerfield and, Director of Employment Standards (Respondent) *(Terminated)*

**1299-11-ES; 1300-11-ES; 1301-11-ES:** Sharon Coutu and Jean Coutu operating as Mortgage Marketing (Applicant) v. Starlynn Bourque and, Director of Employment Standards (Respondent); Sharon Coutu and Jean Coutu operating as Mortgage Marketing (Applicant) v. Katreena Lepage and, Director of Employment Standards (Respondent); Sharon Coutu and Jean Coutu operating as Mortgage Marketing (Applicant) v. Jonathan Lavoie and, Director of Employment Standards (Respondent) *(Terminated)*

**1360-11-ES:** Farahnaz Lessan (Applicant) v. 1469326 Ontario Limited o/a Fun on the Run Preschool Centre and, Director of Employment Standards (Respondent) *(Terminated)*

**1416-11-ES:** Maria Rizzo (Applicant) v. Toronto Board of Education and, Director of Employment Standards (Respondent) *(Terminated)*

**1423-11-ES:** Robert Scarff (Applicant) v. Empire Roofing Corporation and, Director of Employment Standards (Respondent) *(Terminated)*

**1424-11-ES:** Green Light-IQ (Applicant) v. Peter Nowicki and, Director of Employment Standards (Respondent) *(Dismissed)*

**1439-11-ES:** Barrie Conrod, a Director of Cubvar Inc. (Applicant) v. David Livingstone, Robert Kanye, Vanessa Reichert, Danielle Palumbo, Zsofia Sera, Peter Murray, Anna Patterson, Matthew Baird, Krystal Blaker, Rachel Brooks, Ayndrea Campbell, Amanda Cober, Lindsay Conrod, Eric Daranyi, Josh Desroches, Raquel Detweiler, Patrick Doolan, Kate Ferguson, Jessica Furtado, Sarah Gubler, Kaitlyn Langlois, Evonna Livingstone, Lincoln McClaren, James McRae, Arun Mehta, Tim Pegg, Sam Ramar, Christipher Reid, Nicolette Reyhani, Sarah Schoenau, Barry Schwartzentruber, Wes Spooner, Kristen Tremblay, Andrew Vicek and, Director of Employment Standards (Respondent) *(Terminated)*

**1444-11-ES:** Brad E. Ashley, Kevin Melnyk, Chris Bolton, Ralph Idems, directors of Estate # 31-1257939 Vertigo Group Inc. (Applicant) v. Maurice Allen, Chris Carroll, Sharat (Barry) Doobay, Ashok Heng-Don, Andre Lamay, Brian Schwass, Drago C. Skrilec, S. Parmar and, Director of Employment Standards (Respondent) *(Terminated)*

**1548-11-ES:** Elegance Decoration Inc. (Applicant) v. Xun Qi Chen and, Director of Employment Standards (Respondent) *(Dismissed)*

**1549-11-ES:** Elegance Decoration Inc. (Applicant) v. Ziao Shu Yan and, Director of Employment Standards (Respondent) *(Dismissed)*

**1609-11-ES:** Traffic Paralegal Services Professional Corporation (Applicant) v. Michelle Williams and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1610-11-ES:** 1440847 Ontario Inc. o/a Quiznos Subs (Applicant) v. Sasha Pacheco and, Director of Employment Standards (Respondent) *(Dismissed)*

## APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

**1726-07-HS; 1321-08-HS** Toronto West Detention Centre (Applicant) v. Ontario Public Service Employees Union and, Issa Muse, Inspector (Respondent); OPSEU (Applicant) v. Toronto West Detention Centre and, Issa Muse, Inspector (Respondent) *(Withdrawn)*

**3216-09-HS:** United Brotherhood of Carpenters & Joiners of America, Local 1946 (Applicant) v. Ellis-Don Corporation and, Dan Dignard, Inspector (Respondent) v. International Brotherhood of Electrical Workers, Local 120 (Intervener) *(Granted)*

**3746-09-HS:** United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. Action Group Inc. and, Dan Dignard, Inspector (Respondent) *(Granted)*

**3294-10-HS; 4325-10-HS:** Liquor Control Board of Ontario (Applicant) v. Ontario Public Service Employees Union, Christian Forsey, JHSC Worker Representative, Ministry of Labour Mr. Marc Dugas, (Inspector) (Respondent) *(Withdrawn)*

**1210-11-HS:** URS Canada Inc. (Applicant) v. Adrian David, Inspector (Respondent) *(Terminated)*

**1478-11-HS:** Tonolli Canada Ltd (Applicant) v. Don Smeltzer, Certified Worker Member of the Joint Health and Safety Committee, Robert Rae, Inspector (Respondent) *(Dismissed)*

## PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

**2043-10-PS:** Ontario Nurses' Association (Applicant) v. The Ottawa Hospital, Valley Stream Manor (Respondent) v. Ontario Public Service Employees Union, Canadian Union of Public Employees Local 4000 (Intervener) *(Granted)*

**0262-11-PS:** Ontario Public Service Employees Union (Applicant) v. Windsor Regional Hospital, St. Joseph's Health Care London, CAW Canada, Canadian Union of Public Employees, International Brotherhood of Electrical Workers and, Ontario Nurses' Association (Respondent) *(Endorsed Settlement)*

## APPEAL - PUBLIC SECTOR COMPENSATION RESTRAINT TO PROTECT PUBLIC SERVICES ACT, 2010

**0024-11-RB:** Maureen Bruce-Payne (Applicant) v. North Bay Golden Age Club (Respondent) *(Granted)*

## COMPLAINTS UNDER THE PUBLIC INQUIRIES ACT

**1509-11-PI:** Dan Lariviere (Applicant) v. Brown's Concrete Products Ltd (Respondent) *(Withdrawn)*

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**3417-Y6-R; 0315-07-R:** Christian Labour Association of Canada (Applicant) v. Tamarack Development Corporation (Respondent) v. Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Intervener); Christian Labour Association of Canada (Applicant) v. Taggart Realty Management Inc. (Respondent) v. Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Intervener) *(Dismissed)*

**0144-09-PS:** Ontario Nurses' Association (Applicant) v. Bayshore Home Health, Bayshore Home Health, Sarnia, Bayshore Home Health, Chatham, Victorian Order of Nurses Sarnia-Lambton, Victorian Order of Nurses Chatham-Kent (Respondent) v. Erie St. Clair Community Care Access Centre (Intervener) *(Granted)*

**0524-10-ES:** Sajid Anjum (Applicant) v. World Media Corp. (Canada) Inc. o/a Can-India News and, Director of Employment Standards (Respondent) *(Dismissed)*

**0560-10-ES:** Instaloans Inc. (Applicant) v. Jenni Whalen, Stephanie Peletz, Kerri Ostroski, Jennifer Luck, Cassandra Fournier, Shannon Caudle, Kylie Gallant, Debra Keefe, Bobb-Jo Miller, Larissa Turco, Karen (Speers) Wilson and, Director of Employment Standards (Respondent) *(Dismissed)*

**1169-10-OH:** Shawn Marc Amerlinck and, Michael-John Knoblauch (Applicant) v. Brighton Court Apartments c/o Realstar Management, Bruce Maki, Wendy Nason Maki, Paul Halowaty and Deborah Warren Logar (Respondent) *(Terminated)*

**1488-10-U:** Alan Winterburn (Applicant) v. Canadian Auto Workers and Canadian Auto Workers, Local 1973 (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

**4275-10-G:** International Union of Painters and Allied Trades Local 1819 (Glaziers) (Applicant) v. 1440842 Ontario Inc. o/a KYIV Architectural Metals (Respondent) *(Dismissed)*

**0750-11-ES** Michelle May Riley, Director of R. Bros. Electrical Group Inc. (Applicant) v. Kastriot Mustafa and Director of Employment Standards (Respondent) *(Dismissed)*

**0830-11-G:** Labourers' International Union of North America, Local 493 (Applicant) v. M & G Fencing Inc. (Respondent) *(Dismissed)*

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 2011

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**1237-09-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Westendorp Demolition and, John Westendorp Enterprises Inc. (Respondent)

Unit: "all construction labourers in the employ of Westendorp Demolition and John Westendorp Enterprises Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Westendorp Demolition and John Westendorp Enterprises Inc. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

**2352-09-R:** United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. TCI Titan Contracting Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of TCI Titan Contracting Inc. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**3788-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2167553 Ontario Inc. o/a Collingwood Interior Eacoustic Collingwood Interiors and Acoustics (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 2167553 Ontario Inc. o/a Collingwood Interior Eacoustic, Collingwood Interiors and Acoustics in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 2167553 Ontario Inc. o/a Collingwood Interior Eacoustic, Collingwood Interiors and Acoustics in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

**4107-10-R:** International Union of Operating Engineers, Local 793 (Applicant) v. DLB Construction Ltd. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of DLB Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and. all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of DLB Construction Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in unit)

**1088-11-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (Applicant) v. M-L Fire & Burglary Alarms Ltd. (Respondent)

Unit: "all sprinkler fitters and sprinkler fitters' apprentices in the employ of M-L Fire & Burglary Alarms Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all sprinkler fitters and sprinkler fitters' apprentices in the employ of M-L Fire & Burglary Alarms Ltd. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**1755-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Arcovarzim Renovations Inc. (Respondent)

Unit: "all carpenters and carpenters; apprentices in the employ of Arcovarzim Renovations Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters; apprentices in the employ of Arcovarzim Renovations Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1786-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1644472 Ontario Limited a/o J.B.L Construction (Respondent)

Unit: "all construction labourers in the employ of 1644472 Ontario Limited a/o J.B.L Construction in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman all construction labourers in the employ of 1644472 Ontario Limited a/o J.B.L Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1844-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pomerleau Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Pomerleau Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in unit)

**1942-11-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1786285 Ontario Inc. o/a Trimline Electric (Respondent)

Unit: "all electricians and electricians; apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists; apprentices, and communication cable installers in the employ of 1786285 Ontario Inc. o/a Trimline Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and foreman all electricians and electricians; apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists; apprentices, and communication cable installers in the employ of 1786285 Ontario Inc. o/a Trimline Electric in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**1953-11-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Kirbie Group Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Kirbie Group Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Kirbie Group Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2014-11-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Ramco Installation Ltd. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Ramco Installation Ltd., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Ramco Installation Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**2056-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. 2191434 Ontario Inc. o/a Elgin Construction (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers, and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of 2191434 Ontario Inc. o/a Elgin Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers, and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of 2191434 Ontario Inc. o/a Elgin Construction in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

## Bargaining Agents Certified Subsequent to Vote

**3698-10-R:** Labourers' International Union of North America, Local 837 (Applicant) v. Thomson Metals and Disposal LP and Thomson Waste Transfer LP (Respondent)

Unit: "all employees employed by Thomson Metals and Disposal LP and Thomson Waste Transfer LP in the City of Burlington and the City of Hamilton save and except non-working supervisors, office and sales staff, dispatchers, warehouse workers, warehouse lead hands, welders, mechanics, apprentice mechanics, maintenance co-ordinators, and those above the rank of non-working supervisor" (41 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 43 |
| Number of persons who cast ballots | 48 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 38 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 6 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 21 |
| Number of ballots marked against applicant | 17 |
| Number of ballots segregated and not counted | 10 |

**1309-11-R:** Ontario Workers' Union (Applicant) v. Carillion Services (WOHC) Inc. (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all office and clerical employees of Carillion Services (WOHC) Inc. employed at the William Osler Health Centre, save and except supervisors, persons above the rank of supervisor, secretaries to the President and CEO, Vice Presidents, Directors, Administrative Directors, Medical Chief of Staff, Medical Chiefs of Service, persons regularly employed for not more than twenty-four hours per week, persons employed for school vacation periods and employees covered by other collective agreements" (3 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 5 |
| Number of persons who cast ballots | 4 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**1310-11-R:** Ontario Workers' Union (Applicant) v. Carillion Services (WOHC) Inc. (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all office and clerical employees of Carillion Services (WOHC) Inc. employed at the William Osler Health Centre, regularly employed for not more than twenty-four (24) hours per week, save and except supervisors, persons above the rank of supervisor, secretaries to the President and CEO, Vice Presidents, Directors, Administrative Directors, Medical Chief of Staff, Medical Chiefs of Service, and employees covered by other collective agreements" (7 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 6 |
| Number of persons who cast ballots | 3 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 3 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1336-11-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Firan Technology Group Corporation (Respondent)

Unit: "all employees Firan Technology Group Corporation, Aerospace Division in the City of Toronto, save and except supervisors, persons above the rank of Supervisor, sales and engineering staff, office and clerical and those employees governed by a subsisting collective agreement" (76 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 65 |
| Number of persons who cast ballots | 63 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 56 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |

| | |
|---|---|
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 3 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 42 |
| Number of ballots marked against applicant | 14 |
| Number of ballots segregated and not counted | 6 |

**1346-11-R:** Canadian Union of Public Employees (Applicant) v. African and Caribbean Council on HIV/AIDS in Ontario (ACCHO) (Respondent)

Unit: "all employees of the African and Caribbean Council on HIV/AIDS in Ontario (ACCHO) in the City of Toronto, save and except the Director, Administrative Coordinator, and those currently represented by an existing Trade Union." (5 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 4 |
| Number of persons who cast ballots | 4 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 3 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 1 |

**1584-11-R:** Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Alco Janitorial Services (Respondent)

Unit: "all employees of Alco Janitorial Services working at Laurentian Blvd in the City of Ottawa, save and except supervisors and persons above the rank of supervisor" (3 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 0 |
| Number of persons who cast ballots | 2 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 2 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1595-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Southwestern Sales Corporation Limited (Respondent)

Unit: "all employees of Southwestern Sales Corporation Limited employed in the Cities of Sarnia and Windsor, and the Township of St. Clair and Town of Kingsville, save and except office, clerical and sales staff and managers and those above the rank of manager" (18 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 23 |
| Number of persons who cast ballots | 15 |

| | |
|---|---|
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 14 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 14 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**1604-11-R:** Workers United Canada Council (Applicant) v. Kensington Place Retirement Residence (Respondent) v. United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Intervener)

Unit: "all employees of Kensington Place Retirement Residence in the City of Toronto, save and except supervisors and persons above the rank of supervisor and the Community Relations Manager" (44 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 49 |
| Number of persons who cast ballots | 43 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 34 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 3 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 27 |
| Number of ballots marked in favour of intervener | 8 |
| Number of ballots segregated and not counted | 8 |

**1621-11-R:** Teamsters Local Union No. 879 (Applicant) v. Halton Recycling Ltd. (Respondent)

Unit: "all employees of Halton Recycling Ltd. in the City of Burlington, save and except supervisors, those above the rank of supervisor, office, clerical and sales staff, and students employed during the school vacation period" (45 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 54 |
| Number of persons who cast ballots | 48 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 44 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 34 |
| Number of ballots marked against applicant | 10 |
| Number of ballots segregated and not counted | 4 |

**1683-11-R:** Ontario Nurses' Association (Applicant) v. Revera Health Services Inc. o/a Revera Home Health - Sault Ste. Marie (Respondent)

Unit: "all Registered Nurses and Registered Nurses with a Temporary Class Certificate of Registration engaged in a nursing capacity at Revera Health Services o/a Revera Home Health - Sault Ste. Marie save and except Client Service Specialist/Coordinator, Supervisor and those above the rank of supervisor" (23 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 28 |
| Number of persons who cast ballots | 17 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 17 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 17 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1827-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Rose of Sharon (Ontario) Community c.o.b. as Rose of Sharon Korean Long-Term Care Home (Respondent)

Unit: "all employees of Rose of Sharon (Ontario) Community c.o.b. as Rose of Sharon Korean Long-Term Care Home in the City of Toronto, Ontario, save and except Supervisors and persons above the rank of Supervisor, Office and Clerical Staff, Sales Representatives, Director of Care, RAI Coordinator, 1 Nurse in Charge and employees in the bargaining unit for which any trade union held bargaining unit rights as of August 31, 2011" (50 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 47 |
| Number of persons who cast ballots | 41 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 36 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 29 |
| Number of ballots marked against applicant | 7 |
| Number of ballots segregated and not counted | 5 |

**1828-11-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. City Park Co-Operative Apartments Inc. (Respondent)

Unit: "all employees of City Park Co-operative Apartments Inc. in the City of Toronto save and except office and clerical staff and members of the Board of Directors" (15 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 18 |
| Number of persons who cast ballots | 15 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 15 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 15 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1866-11-R:** United Food & Commercial Workers, Local 206 (Applicant) v. Lia's Hospitality Inc. operating as Swiss Chalet Restaurant #1167 (Respondent)

Unit: "all employees of Lia's Hospitality Inc. o/a Swiss Chalet at 5165 Dixie Road, in the City of Mississauga, Ontario, save and except Assistant Guest Services Manager and persons above the rank of Assistant Guest Services Manager" (24 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 22 |
| Number of persons who cast ballots | 19 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 19 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 12 |
| Number of ballots marked against applicant | 7 |
| Number of ballots segregated and not counted | 0 |

**1900-11-R:** Canadian Union of Public Employees (Applicant) v. St. Matthew's House (Respondent)

Unit: "all employees employed by St. Matthew's House in the City of Hamilton, save and except supervisors and persons above of the rank of supervisor, administrative staff and students" (55 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 74 |
| Number of persons who cast ballots | 69 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 60 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 8 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 51 |
| Number of ballots marked against applicant | 16 |
| Number of ballots segregated and not counted | 2 |

**1905-11-R:** National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. RockTenn-Container Canada, L.P. (Respondent) v. Independent Paperworkers of Canada (Intervener)

Unit: "all employees of Rock-Tenn Container Canada L.P. at its Guelph Plant, save and except production supervisors, persons above the rank of production supervisor, clerical and sales staff, field representatives and design department" (118 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 116 |
| Number of persons who cast ballots | 94 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 94 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 90 |
| Number of ballots marked in favour of intervener | 3 |
| Number of ballots segregated and not counted | 0 |

**1918-11-R:** Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Schenker of Canada Limited (Respondent)

Unit: "all employees of Schenker of Canada Limited employed at 2340 Winston Park Drive, in the City of Oakville, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (6 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 6 |
| Number of persons who cast ballots | 6 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 6 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1919-11-R:** UNITE HERE Local 75 (Applicant) v. Toronto Airport (V1) Purchaseco Inc. c.o.b. as Travelodge Hotel Dixon Road (Toronto Airport) (Respondent)

Unit: "all employees employed by Toronto Airport (V1) Purchaseco Inc. c.o.b. as Travelodge Hotel Dixon Road (Toronto Airport) at 925 Dixon Road, Toronto, ON M9W 1J8 in the Night Auditor Classification and all employees employed in the Reservations Department, save and except supervisors and those above the rank of supervisor" (6 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 6 |
| Number of persons who cast ballots | 4 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**1966-11-R:** Ontario Nurses' Association (Applicant) v. Ukrainian Home for the Aged o/a Ivan Franko Home (Respondent)

Unit: "all Registered Nurses and Registered Nurses with a Temporary Certificate of Registration engaged in a nursing capacity at the Ukrainian Home for the Aged o/a Ivan Franko Home in the City of Toronto, save and except Director of Care and those above the rank of Director of Care" (8 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 9 |
| Number of persons who cast ballots | 8 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 7 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |

| | |
|---|---|
| Number of ballots marked in favour of applicant | 8 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

## Applications for Certification Dismissed Without Vote

**1775-08-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Power Drywall Inc. (Respondent)

## Applications for Certification Dismissed Subsequent to Vote

**1537-11-R:** Teamsters Local Union No. 419 (Applicant) v. INKAS Security Services Ltd. (Respondent)

Unit: "all employees of INKAS Security Services Ltd. employed in Cash in Transit and working at or out of 64 Signet Drive, Toronto, save and except office, clerical and sales staff, unarmed security guards, students working during school vacation periods, supervisors and those above the rank of supervisor." (40 employees in unit)

**1642-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Hampton Inn by Hilton Toronto Airport Corporate Centre (Respondent)

Unit: "all employees of Hampton Inn by Hilton Toronto Airport Corporate Centre employed at 5515 Eglinton Avenue West in the City of Toronto, save and except non-working supervisors and persons above the rank of non-working supervisor, office, clerical staff and persons for whom another trade union held bargaining rights as the Date of Application" (14 employees in unit)

**1644-11-R:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Homewood Suites by Hilton Toronto Airport Corporate Centre (Respondent)

Unit: "all employees of Homewood Suites by Hilton Toronto Airport Corporate Centre employed at 5515 Eglinton Avenue West in the City of Toronto, save and except non-working supervisors and persons above the rank of non-working supervisor, office, clerical staff and persons for whom another trade union held bargaining rights as the Date of Application" (21 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 64 |
| Number of persons who cast ballots | 54 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 53 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 13 |
| Number of ballots marked against applicant | 18 |
| Number of ballots segregated and not counted | 22 |

**1724-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Halton Recycling Ltd. o/a Emterra Environmental (Respondent)

Unit: "all employees of Halton Recycling Ltd. o/a Emterra Environmental employed in the Regional Municipality of Niagara save and except supervisors, and those above the rank of supervisor" (115 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 123 |
| Number of persons who cast ballots | 114 |

| | |
|---|---|
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 101 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 13 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 43 |
| Number of ballots marked against applicant | 58 |
| Number of ballots segregated and not counted | 13 |

**1741-11-R:** Canadian National Federation of Independent Unions (Applicant) v. Trafalgar Terrace Retirement Residence (Respondent)

Unit: "all employees of the employer working at Trafalgar Terrace Retirement Residence in the City of London, save and except supervisors, persons above the rank of supervisor, co-ordinators, registered and graduate nurses, maintenance, office and clerical staff" (21 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 22 |
| Number of persons who cast ballots | 19 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 18 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 8 |
| Number of ballots marked against applicant | 11 |
| Number of ballots segregated and not counted | 0 |

**1767-11-R:** Teamsters Local Union No. 91 (Applicant) v. Superior Roof Truss (Respondent)

Unit: "all employees of Superior Roof Truss working in or out of 6525 Bank Street, Ottawa, Ontario, save and except foreman, supervisors, those above the rank of supervisor, office and clerical employees and sales staff" (28 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 28 |
| Number of persons who cast ballots | 25 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 23 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 9 |
| Number of ballots marked against applicant | 14 |
| Number of ballots segregated and not counted | 2 |

**1772-11-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Northampton Inn Kanata o/a Country Inn and Suites Ottawa West (Respondent)

Unit: "all employees of Northampton Inn Kanata o/a Country Inn and Suites Ottawa West in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, front desk, office and clerical staff" (12 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 12 |
| Number of persons who cast ballots | 9 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 9 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 1 |
| Number of ballots marked against applicant | 8 |
| Number of ballots segregated and not counted | 0 |

**1778-11-R:** Service Employees International Union Local 2 Brewery, General and Professional Workers' Union (Applicant) v. ALCO Janitorial Services (Respondent)

Unit: "all employees of ALCO Janitorial Services at 1355 Bank Street and 331 Cooper Street in the City of Ottawa save and except supervisors and persons above the rank of supervisor" (5 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 5 |
| Number of persons who cast ballots | 3 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 3 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 1 |
| Number of ballots marked against applicant | 2 |
| Number of ballots segregated and not counted | 0 |

**1824-11-R:** Teamsters Local Union No. 230, affiliated with the International Brotherhood of Teamsters (Applicant) v. National East Ready Mix Corp. (Respondent)

Unit: "all employees of National East Ready Mix Corp. working at and out of its Ready Mix operations in the Town of Markham, Ontario, save and except managers and persons above the rank of manager, office, clerical and sales staff." (47 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 53 |
| Number of persons who cast ballots | 48 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 48 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 14 |
| Number of ballots marked against applicant | 34 |
| Number of ballots segregated and not counted | 0 |

**1838-11-R:** The United Brotherhood of Retail, Food, Industrial & Service Trades International Union (Applicant) v. Greenville Landscaping Inc. (Respondent)

Unit: "all employees of the responding party in the Province of Ontario, save and except office, clerical and sales staff, managers and those above the rank of manager and employees already covered by a subsisting collective agreement or otherwise performing construction work." (21 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 18 |
| Number of persons who cast ballots | 17 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 11 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 5 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked against applicant | 10 |
| Number of ballots segregated and not counted | 3 |

**1852-11-R:** Teamsters Local Union No. 879 (Applicant) v. Halton Recycling Ltd. (Respondent)

Unit: "all employees of the Emterra Environmental and/or Halton Recycling Ltd. in the City of Brantford, save and except supervisors, those above the rank of supervisor, office, clerical and sales staff, and students employed during the school vacation period" (18 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 13 |
| Number of persons who cast ballots | 16 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 13 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 3 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked against applicant | 9 |
| Number of ballots segregated and not counted | 3 |

**1917-11-R:** Grand River Valley Health Care Employee's Union Local 305 affiliated with the Christian Labour Association of Canada (Applicant) v. Hilltop Manor Cambridge (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all employees in the Employer's nursing home at Hilltop Manor in Cambridge, Ontario, save an except professional nursing staff, physiotherapists, occupational therapists, supervisors, persons above the rank of supervisor, office staff, maintenance personnel, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period  all employees of Hilltop Manor in Cambridge, Ontario, regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period, save and except professional nursing staff, physiotherapists, occupational therapists, maintenance personnel, supervisors, persons above the rank of supervisor, and office staff" (105 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 106 |
| Number of persons who cast ballots | 81 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 80 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |

| | |
|---|---|
| Number of ballots marked in favour of applicant | 24 |
| Number of ballots marked in favour of intervener | 56 |
| Number of ballots segregated and not counted | 1 |

**1921-11-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Applicant) v. Trench Limited, Coil Products Division (Respondent)

Unit: "all employees of Trench Ltd. in the City of Toronto save and except supervisors, persons above the rank of supervisors, engineering, office and clerical, and students" (190 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 250 |
| Number of persons who cast ballots | 234 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 234 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 105 |
| Number of ballots marked against applicant | 128 |
| Number of ballots segregated and not counted | 0 |

**1958-11-R:** U.F.C.W. Local 333 (Applicant) v. Safety Net Security Ltd. (Respondent)

Unit: "all employees of Safety Net Security Ltd. employed as security guards at Abitibi Bowater, 2001 Neebing Ave., Thunder Bay, Ontario P7E 6S3 save and except managers and persons above the rank of manager" (36 employees in unit)

**1976-11-R:** United Food & Commercial Workers, Local 206 (Applicant) v. Royal Host Limited Partnership c.o.b. as Hilton London Ontario (Respondent)

Unit: "all persons of Hilton Hotel London employed as Front Desk, Command Centre, Business Lounge, Night Auditor and Overnight Security, save and except persons covered by a current certificate issued by the Ontario Labour Relations Board or other Collective Agreement, supervisors, persons above the rank of supervisor" (19 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 21 |
| Number of persons who cast ballots | 20 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 18 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 8 |
| Number of ballots marked against applicant | 10 |
| Number of ballots segregated and not counted | 2 |

## Applications for Certification Withdrawn

**0677-09-R:** Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Tony Olsen Enterprises (Respondent)

**0428-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tiltran Services Inc. (Respondent)

**0999-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. G. L. Masonry Contracting (London) Limited (Respondent)

**1290-11-R:** Service Employees International Union Local 2 Brewery, General & Professional Workers' Union (Applicant) v. Labourers' International Union of North America Central & Eastern Canada Organizing Fund (Respondent)

**1704-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Mady Development Corporation,, Mady Contract Division Ltd., Mady Contract Division (2009) Ltd. and, Cromax Forming Ltd. (Respondent) v. Labourers International Union, Local 506 (Intervener)

**1808-11-R:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Sodexo Canada Inc. (Respondent) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Intervener)

**1872-11-R:** Service Employees International Union Local 2 Brewery, General and Professional Workers' Union (Applicant) v. All New Cleaning and Maintenance (Respondent)

**1998-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. First Student Canada (Respondent)

**2121-11-R:** Canadian Construction Workers Union (Applicant) v. A & L Carpentry Corp. (Respondent)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**3924-Y6-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Carillion Canada Inc., TWD Roads Management Inc. (Respondent) v. Toronto and Area Road Builders' Association, International Union of Operating Engineers, Local 793 (Intervener) *(Withdrawn)*

**0948-08-R:** Millwright District Council of Ontario and its Local Unions (Applicant) v. R.J.S. Mechanical Inc., KR Wind Holdings (Canada) Inc., KR Wind Inc., 2064807 Ontario Inc., Q.C. Enterprise Inc. (Respondent) *(Granted)*

**2149-09-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Corbett Electric Limited, Northspan Construction Inc., Semino Inc., Laurentian Electric Ltd., Corbett Electric (1992) Limited, Metrocor Limited and, 1499476 Ontario Inc. o/a National Acres (Respondent) *(Granted)*

**0051-10-R:** Labourers' International Union of North America, Local 506 (Applicant) v. City Wide Demolition Ltd. c.o.b. as Citywide Demolition & Excavation Ltd., Jason Caron in his personal capacity and c.o.b. as Down Right Demolition & Excavation Ltd., Dallas Dmytrow in his personal capacity and c.o.b. as Down Right Demolition & Excavation Ltd. (Respondent) *(Endorsed Settlement)*

**1481-10-R:** The Bricklayers, Masons Independent Union of Canada, Local 1 and Labourers' International Union of North America, Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. Rivervalley Masonry Group Inc. and, Haifa Masonry Inc. (Respondent) *(Withdrawn)*

**0961-11-R:** Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Everest Restoration Ltd., Everest Contracting Group Ltd. (Respondent) *(Endorsed Settlement)*

**1134-11-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Mack Mechanical Solutions Inc. and/or, Dean Muir c.o.b. as Muir/Mack (Respondent) *(Endorsed Settlement)*

**1695-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. P.L.S. Landscaping and Excavation Ltd., Pattyn Landscaping Ltd., Pattyn Landscaping Services Ltd. (Respondent) *(Withdrawn)*

## SALE OF A BUSINESS

**3924-Y6-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Carillion Canada Inc., TWD Roads Management Inc. (Respondent) v. Toronto and Area Road Builders' Association, International Union of Operating Engineers, Local 793 (Intervener) *(Withdrawn)*

**0948-08-R:** Millwright District Council of Ontario and its Local Unions (Applicant) v. R.J.S. Mechanical Inc., KR Wind Holdings (Canada) Inc., KR Wind Inc., 2064807 Ontario Inc., Q.C. Enterprise Inc. (Respondent) *(Granted)*

**2149-09-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Corbett Electric Limited, Northspan Construction Inc., Semino Inc., Laurentian Electric Ltd., Corbett Electric (1992) Limited, Metrocor Limited and, 1499476 Ontario Inc. o/a National Acres (Respondent) *(Granted)*

**2475-09-R:** Le Conseil scolaire de district catholique du Nouvel-Ontario (Applicant) v. L'Association des enseignantes et des enseignants franco-ontariens, unité Moyen-Nord catholique, L'Association des enseignantes et des enseignants franco-ontariens, unite Hornepayne (Respondent) *(Endorsed Settlement)*

**2476-09-R:** Le Conseil scolaire de district catholique du Nouvel-Ontario (Applicant) v. L'Association des enseignantes et des enseignants franco-ontariens, unité Moyen-Nord catholique, L'Association des enseignantes et des enseignants franco-ontariens, Unité Dubreuilville (Respondent) *(Endorsed Settlement)*

**0051-10-R:** Labourers' International Union of North America, Local 506 (Applicant) v. City Wide Demolition Ltd. c.o.b. as Citywide Demolition & Excavation Ltd., Jason Caron in his personal capacity and c.o.b. as Down Right Demolition & Excavation Ltd., Dallas Dmytrow in his personal capacity and c.o.b. as Down Right Demolition & Excavation Ltd. (Respondent) *(Endorsed Settlement)*

**1481-10-R:** The Bricklayers, Masons Independent Union of Canada, Local 1 and Labourers' International Union of North America, Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. Rivervalley Masonry Group Inc. and, Haifa Masonry Inc. (Respondent) *(Withdrawn)*

**3582-10-R:** International Union of Operating Engineers, Local 793 (Applicant) v. 2011791 Ontario Ltd. o/a Triple M Demolition and, Triple M Demolition Inc. (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council, Ontario Association of Demolition Contractors (Intervener) *(Granted)*

**0961-11-R:** Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Everest Restoration Ltd., Everest Contracting Group Ltd. (Respondent) *(Endorsed Settlement)*

**1134-11-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Mack Mechanical Solutions Inc. and/or, Dean Muir c.o.b. as Muir/Mack (Respondent) *(Endorsed Settlement)*

**1695-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. P.L.S. Landscaping and Excavation Ltd., Pattyn Landscaping Ltd., Pattyn Landscaping Services Ltd. (Respondent) *(Withdrawn)*

# APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**3482-09-R:** Perry Armstrong on his own behalf and on behalf of a group of employees of Good Mechanical Contractors, a division of 524556 Ontario Inc. (Applicant) v. Sheet Metal Workers' International Association, Local Union 47 (Respondent) *(Granted)*

Unit: "All sheet metal workers and sheet metal workers' apprentices in the employ of Good Mechanical Contractors, a division of 524556 Ontario Inc., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman. All sheet metal workers and sheet metal workers' apprentices in the employ of Good Mechanical Contractors, a division of 524556 Ontario Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 21 |
| Number of persons who cast ballots | 19 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 11 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 8 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 2 |
| Number of ballots marked against respondent | 10 |
| Number of ballots segregated and not counted | 7 |

**3929-09-R:** Jeffrey Eriksson (Applicant) v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Respondent) *(Withdrawn)*

Unit: "all employees who are a qualified and/or certified journeymen or apprentice employed as a plumber, steamfitter, pipefitter, gasfitter, welder and apprentice thereof or job foreman in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario" (2 employees in unit)

**0332-10-R:** Rick Harsh, on his own behalf and on behalf of a group of employees of Athens Rugs Limited (Applicant) v. The Carpenters' District Council of Ontario and United Brotherhood of Carpenters and Joiners of America, Local 93 (Respondent) v. Athens Rugs Ltd. (Intervener) *(Withdrawn)*

Unit: "all journeymen and apprentice carpenters, other than millwrights, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom the Union has bargaining rights." (1 employee in unit)

**0368-10-R:** Jeffrey Eriksson (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Low Rise) (Respondent) *(Withdrawn)*

Unit: "2.01 The Employer recognizes Local 46, Low Rise Residential Division as the exclusive bargaining agent for all plumbers and plumbers' apprentices in the employ of the Employer in the construction industry in the Municipalities of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the portion of the Regional Municipality of Durham lying west of Durham Regional Road 23 from Lake Ontario to Lake Simcoe and including the Town of Ajax, the Town of Pickering, Uxbridge Township and Georgina Township, excluding the Industrial, Commercial and Institutional Sector of the construction industry save and except non-working foremen and persons above the rank of non-working foreman. In addition, to the recognition provided for in article 2.01 of the Collective Agreement, on behalf of its members, the Employer recognizes Local 46 as the sole and exclusive bargaining agent for all plumbers and plumbers' apprentices employed by such member contractors in Board Areas 5, 6, 7, 9, 10, 11, 18, 26 and 27 in the low-rise portion of the residential sector of the construction industry, save and except non-working forepersons and persons above the rank of non-working foreperson and employees already covered by subsisting bargaining rights or collective agreements which have not been abandoned as of the date hereof." (2 employees in unit)

**1420-10-R:** Jeffrey Eriksson (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Respondent) *(Withdrawn)*

Unit: "Article 1.01 - The bargaining unit under this Agreement shall be comprised of the Union, United Association Local 46 on behalf of its hourly rated members, employees of the Employer now employed, and employed in the future for the purpose of service, repair and upgrading of piping and equipment pertaining to operating mechanical systems. This Agreement does not apply to renovation, major industrial shutdown or new installation work. Article 1.02 - The Employer recognizes the Union, United Association Local 46 as the duly constituted Bargaining Agent for all its hourly rated employees, including foremen, engaged in the service division and the geographic boundaries of the Regional Municipality of York; that portion of Ontario County Line - west of Pickering - Whitby Townships' Line; Peel County; that portion of Halton County Line south of Highway 401 and East of the 7th Line and Dufferin County, and any extension of such geographic area required to cause it to conform to the full geographic scope of the jurisdiction of the Union." (2 employees in unit)

**1239-11-R:** Harold St. Croix and John DaSilva (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 and, Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Respondent) *(Withdrawn)*

**1460-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Respondent) *(Withdrawn)*

**1967-11-R:** Gail Belan (Applicant) v. Teamsters Local Union No. 419 (Respondent) *(Granted)*

Unit: "Retirement Home 73 King Street West Mississauga, Ontario L5B 1H1" (45 employees in unit)

**2055-11-R:** Topnotch Building Maintenance Staff at Casa Loma George Brown College (Applicant) v. Teamster Local Union 938 (Respondent) v. Topnotch Building Maintenance Ltd. (Intervener) *(Granted)*

## REFERRAL FROM MINISTER (SECTION 115)

**0929-11-M:** Workers United Ontario Council (Applicant) v. Workers United, Canadian Office & Professional Employees Union, Local 343 (Respondent) *(Granted)*

**1634-11-M; 1649-11-M; 1650-11-M; 1651-11-M:** United Food and Commercial Workers Canada Local 175 (Applicant) v. Green Grove Foods Corp. (Respondent) *(Granted)*

**1791-11-M:** United Food and Commercial Workers Canada Local 175 (Applicant) v. Green Grove Foods Corp. (Respondent) *(Granted)*

## APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT

**1926-11-M:** The Corporation of the County of Brant (Applicant) v. Ontario Public Service Employees Union, Local 256 (Respondent) *(Granted)*

# COMPLAINTS OF UNFAIR LABOUR PRACTICE

**3189-09-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Graham Construction and Engineering Inc. and/or, Jasper Constructors Ltd. (Respondent) *(Terminated)*

**1005-10-U:** Hendry Kajendrakumar (Applicant) v. Canadian Union of Public Employees and its Local 3798-06 (Respondent) v. Salvation Army Hope Shelter (Intervener) *(Withdrawn)*

**1919-10-U:** Vince Skinner (Applicant) v. The Canadian Union of Public Employees (CUPE) Local 1001 (Respondent) v. University of Windsor (Intervener) *(Withdrawn)*

**2567-10-U:** Denis Rancourt (Applicant) v. Allan Rock, University of Ottawa and, Association of Professors of the University of Ottawa (APUO) (Respondent) *(Dismissed)*

**2603-10-U:** Mirjana Krmek (Applicant) v. Canadian Union of Public Employees Local 145 (Respondent) *(Withdrawn)*

**2626-10-U:** The Society of Energy Professionals (Applicant) v. Bruce Power L.P. (Respondent) *(Withdrawn)*

**2712-10-U:** Elementary Teachers' Federation of Ontario/ Ottawa Carleton Elementary Teachers' Federation (Applicant) v. The Ottawa-Carleton District School Board Cindy Beauchamp, Laura McAlister (Respondent) *(Withdrawn)*

**3497-10-U:** Marc Smith (Applicant) v. Mold Masters (2007) Limited (Respondent) *(Withdrawn)*

**4047-10-U:** Elementary Teachers' Federation of Ontario/Simcoe County Elementary Teachers' Federation (Applicant) v. Simcoe County District School Board, Kathi Wallace, Janis Medysky, Anita Simpson, Judy Kirk (Respondent) *(Terminated)*

**4093-10-U:** Randall E. Stengel (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 444 (Respondent) *(Dismissed)*

**4268-10-U:** Ryan Cleary (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 838-04 (Respondent) *(Withdrawn)*

**0016-11-U:** Tammy Vieira (Applicant) v. Canadian Union of Public Employees Local 1280 (Respondent) *(Withdrawn)*

**0296-11-U:** Derek Crane (Applicant) v. The United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 455 (Respondent) *(Dismissed)*

**0429-11-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tiltran Services Inc. and, AllStaff Inc. (Respondent) *(Withdrawn)*

**0545-11-U:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Queen's University at Kingston (Respondent) *(Withdrawn)*

**0662-11-U:** Susana Neustaeter, Veronica McDonald, Carole Mitro, Chris Brown, Gerri Gray, All Family Visitors employed by The County of Lambton, and members of CUPE Local 1291 (Applicant) v. Canadian Union of Public Employees (Respondent) v. The Corporation of The County of Lambton (Intervener) *(Dismissed)*

**0694-11-U:** Rozita (Miranda) Yousefipour (Applicant) v. Canadian Union of Public Employees and its Local 3202 (Respondent) v. Neighbourhood Link Support Services (Intervener) *(Withdrawn)*

**0900-11-U:** Martin Majhi (Applicant) v. UNITE HERE Local 75 (Respondent) v. The Fairmont Royal York (Intervener) *(Withdrawn)*

**0989-11-U:** Carmen Kloet (Applicant) v. United Food & Commercial Workers Local 175 and Local 633 (Respondent) v. Metro Ontario Inc. (Intervener) *(Withdrawn)*

**1115-11-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Riocan Property Services (Respondent) *(Withdrawn)*

**1118-11-U:** Cornelia Hendrika Heatherington (Applicant) v. CUPE Local 4400 (Respondent) *(Withdrawn)*

**1240-11-U; 1292-11-U; 1293-11-U; 1461-11-U; 1491-11-U; 1492-11-U:** Harold St. Croix and John DaSilva (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 and, Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Respondent); Service Employees International Union Local 2 Brewery, General & Professional Workers' Union (Applicant) v. Labourers' International Union of North America Central & Eastern Canada Organizing Fund (Respondent); Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Respondent) v. Labourers' International Union of North America, Ronald A. Pink, Q.C. (Intervener); Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Service Employees International Union Local 2, Brewery, General and Professional Workers' Union, Durval Terciera, Daniel Avero, Jaime Melo, Geatano Strazzanti and Michael O'Brien (Respondent); LIUNA Local 183 Training and Rehabilitation Centre Trust (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union and, John Poirier (Respondent); Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Applicant) v. Labourers' Local 183 Members Training and Rehabilitation Fund (Respondent) *(Withdrawn)*

**1345-11-U:** Michael Nairn (Applicant) v. Canadian Union of Brewery and General Workers Local 325 (Respondent) *(Dismissed)*

**1376-11-U:** Bonnie Pelletier (Applicant) v. Travelodge Ottawa West Hotel and Conference Centre and, Hospitality and Service Trade Union, Local 261 (Respondent) *(Withdrawn)*

**1436-11-U:** Service Employees International Union, Local 1 Canada (Applicant) v. William Osler Health Centre and, Ontario Workers' Union (Respondent) *(Dismissed)*

**1519-11-U:** Service Employees International Union, Local 1 Canada (Applicant) v. Humber River Regional Hospital and, Ontario Workers' Union (Respondent) *(Dismissed)*

**1538-11-U:** Teamsters Local Union No. 419 (Applicant) v. INKAS Security Services Ltd. (Respondent) *(Withdrawn)*

**1562-11-U:** Diana Andrews (Applicant) v. Elementary Teachers Federation of Ontario, Martin Long and, Karen Brown (Respondent) *(Terminated)*

**1567-11-U:** Workers United Canada Council (Applicant) v. Sleep Country Canada LP (Respondent) *(Withdrawn)*

**1914-11-U; 1915-11-U:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Homewood Suites by Hilton Toronto Airport Corporate Centre (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Hampton Inn by Hilton Toronto Airport Corporate Centre (Respondent) *(Dismissed)*

## APPLICATION FOR INTERIM ORDER

**1600-11-M:** Service Employees International Union, Local 1 Canada (Applicant) v. Humber River Regional Hospital and, Ontario Workers' Union (Respondent) *(Dismissed)*

**1640-11-M:** Universal Workers Union Labourers' International Union of North America Local 183 (Applicant) v. Service Employees International Union Local 2, Brewery, General and Professional Workers' Union, Durval Terciera, Daniel Avero, Jaime Melo, Geatano Strazzanti and Michael O'Brien (Respondent) *(Withdrawn)*

**2008-11-M:** Service Employees International Union, Local 1 Canada (Applicant) v. Sunnybrook Health Sciences Centre (Respondent) *(Withdrawn)*

## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**1839-11-M:** The Children's Aid Society of the County of Simcoe (Applicant) v. Simcoe County Children's Aid Society Employee Association (Respondent) *(Granted)*

**1843-11-M:** Catholic Children's Aid Society of Hamilton (Applicant) v. The Canadian Union of Public Employees and its Local 1797 (Respondent) *(Granted)*

**1885-11-M; 1886-11-M:** Kitchener Frame Limited (Applicant) v. The National Automobile, Aerospace, Transportation and General Workers Union of Canada and its Local 1451 (Respondent) *(Granted)*

**1962-11-M:** Children's Aid Society of the District of Nipissing and Parry Sound, Canadian Union of Public Employees and its Local 2049, C.L.C. (Applicant) v. (Respondent) *(Granted)*

**1970-11-M:** The Children's Aid Society of the Niagara Region (FACS Niagara), Canadian Union of Public Employees Local 2328 (Applicant) v. (Respondent) *(Granted)*

## JURISDICTIONAL DISPUTES

**1312-10-JD:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 765 (Applicant) v. Bétons Préfabriqués du Lac Inc., Labourers' International Union of North America, Local 527 (Respondent) *(Withdrawn)*

**2708-10-JD:** The Crown In Right of Ontario as Represented By The Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

**4241-10-JD:** The Crown In Right of Ontario as Represented by The Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

**0245-11-JD:** The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

**0561-11-JD:** Ontario Sheet Metal Workers' & Roofers' Conference, Sheet Metal Workers' International Association, Local 473 (Applicant) v. The State Group Inc., International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 736, United Brotherhood of Carpenters and Joiners of America, Local 2222, Wheelwright Group Inc., Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**0959-11-JD:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 593 (Applicant) v. Labourers' International Union of North America, Local 1059, Blue Con Inc. and, St. Clair Mechanical Inc. (Respondent) *(Terminated)*

## EMPLOYEE STATUS

**3965-10-M:** Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. Ming Pao Newspapers (Canada) Ltd. (Respondent) *(Granted)*

**4163-10-M:** Ming Pao Newspapers (Canada) Ltd. (Applicant) v. Communications, Energy and Paperworkers Union of Canada Local 87-M Southern Ontario Newspaper Guild (Respondent) *(Terminated)*

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**1785-10-OH:** Garry Lee (Applicant) v. Gardwell Security Agency Inc. (Respondent) *(Withdrawn)*

**2251-10-OH:** Michael Dorfman (Applicant) v. Alumicor Limited (Respondent) *(Dismissed)*

**3227-10-OH:** Nkumu Assana Kirika (Applicant) v. Le Conseil des écoles catholiques du Centre Est (Respondent) v. L' Association des enseignantes et des enseignants franco-ontariens (Intervener) *(Dismissed)*

**3990-10-OH:** Shlomo Conforti (Applicant) v. Investia Financial Services Inc. and, Industrial Alliance Insurance and Financial Services Inc. (Respondent) *(Dismissed)*

**4051-10-OH:** Darlene Wilson (Applicant) v. Region of Waterloo and Eric Gillespie (Respondent) *(Withdrawn)*

**0380-11-OH:** Jay Young (Applicant) v. McLean & Dickey Ltd. (Respondent) *(Withdrawn)*

**1200-11-OH:** Bob Marriette (Applicant) v. Satcon Power Systems Canada Ltd. ("Satcon") (Respondent) *(Withdrawn)*

**1233-11-OH:** Colin Webster (Applicant) v. Enviro Paving Corporation (Respondent) *(Withdrawn)*

**1234-11-OH:** Tim Ferriman (Applicant) v. Enviro Paving Corporation (Respondent) *(Withdrawn)*

**1499-11-OH:** Danielle Burke (Applicant) v. Extendicare Canada Inc. (ParaMed) (Respondent) *(Withdrawn)*

**1647-11-OH:** Mr. Ron Breutigam (Applicant) v. Witron Canada Corp. (Respondent) v. Sobeys Inc. (Intervener) *(Withdrawn)*

**1901-11-OH:** Robert Sztogryn (Applicant) v. Sharp Bus Lines Limited (Respondent) *(Withdrawn)*

## CONSTRUCTION INDUSTRY GRIEVANCES

**3737-Y5-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Jacobs Catalytic Ltd. (Respondent) v. The Electrical Trade Bargaining Agency of the and Electrical Contractors Association of Ontario, General Presidents' Maintenance Committee (Intervener) *(Withdrawn)*

**0575-09-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. P.C.R. Contractors Inc. (Respondent) *(Withdrawn)*

**1856-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada on behalf of its Local United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Bruce Power LP, Aecon Construction Group Inc. and, Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**1858-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada on behalf of its Local United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Bruce Power LP, Babcock & Wilcox Canada Ltd. and, Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**1859-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada on behalf of its Local United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Bruce Power LP, E.S. Fox Ltd. and, Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**1860-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada on behalf of its Local United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Bruce Power LP, Comstock Canada Ltd. and, Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**1864-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada on behalf of its Local United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Bruce Power LP, Black & McDonald Limited and, Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**2639-09-G; 1323-10-G:** Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Respondent); Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Pickering EPG Control Upgrade) (Respondent) *(Withdrawn)*

**3894-09-G:** International Union of Operating Engineers, Local 793 (Applicant) v. C.W. Smith Crane Services Ltd. (Respondent) v. Crane Rental Association of Ontario (Intervener) *(Granted)*

**0516-10-G:** Universal Workers Union Labourers' International Union of North America, Local 183 (Applicant) v. 2125570 Ontario Inc. o/a Regal Craft Homes (Respondent) *(Withdrawn)*

**0831-10-G:** United Brotherhood of Carpenters and Joiners of America Local 93 (Applicant) v. Athens Rugs Limited (Respondent) *(Withdrawn)*

**1073-10-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union 721 (Applicant) v. Mistyk Welding & Fabrication Ltd., Mistyk Metals Inc., Airon Steels Inc. (Respondent) *(Granted)*

**1480-10-G:** The Bricklayers, Masons Independent Union of Canada, Local 1 and Labourers' International Union of North America, Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. Rivervalley Masonry Group Ltd. and, Haifa Masonry Inc. (Respondent) *(Withdrawn)*

**2963-10-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Napa Valley Trim Inc. (Respondent) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Intervener) *(Withdrawn)*

**3564-10-G:** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Inc. (Respondent) *(Dismissed)*

**3837-10-G:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Hydro One Inc. (Respondent) *(Granted)*

**4194-10-G:** Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Darlington Temporary Power D-111) (Respondent) *(Withdrawn)*

**0467-11-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Heron Group of Companies (Respondent) *(Withdrawn)*

**0538-11-G:** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Networks Inc. (Respondent) v. Electrical Power Systems Construction Association ("Epsca") (Intervener) *(Granted)*

**0606-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Blue Con Inc. (Respondent) *(Terminated)*

**0614-11-G:** International Brotherhood of Electrical Workers Electrical Power Council of Ontario (Applicant) v. Comstock Canada Ltd. (Respondent) *(Withdrawn)*

**0700-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. L. Wave Electric Ltd. (Respondent) *(Endorsed Settlement)*

**0960-11-G:** International Brotherhood of Electrical Workers, Local 773 (Applicant) v. Greater Essex County District School Board (Respondent) *(Withdrawn)*

**0964-11-G:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Prime Star International Fire Stopping Inc., Prime Star International Fire Stopping and Smoke Seal, Prime Star International Fire Stopping (Respondent) *(Granted)*

**0965-11-G:** Labourers' International Union of North America, Ontario Provincial District Council and Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. PNR Railworks Inc. (Respondent) *(Terminated)*

**1164-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. P.L.S. Landscaping and Excavating Ltd. (Respondent) *(Withdrawn)*

**1194-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. P.L.S. Landscaping and Excavation Ltd. (Respondent) *(Withdrawn)*

**1283-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Mack Mechanical Solutions Inc. and/or, Dean Muir c.o.b. as Muir/Mack (Respondent) *(Endorsed Settlement)*

**1377-11-G:** Comstock Canada Limited (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Respondent) *(Endorsed Settlement)*

**1381-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Bruce Power LP, Comstock Canada Ltd. (Respondent) *(Withdrawn)*

**1438-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Ross Contractors & Engineers (Respondent) *(Granted)*

**1622-11-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Traugott Building Contractors Inc. (Respondent) *(Withdrawn)*

**1632-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent) *(Endorsed Settlement)*

**1646-11-G:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Hydro One Inc. (Foreman Rate Reduction) (Respondent) *(Granted)*

**1680-11-G:** Carpenters' District Council of Ontario, Local 1946 (Applicant) v. Oakdale Drywall & Acoustics Ltd. (Respondent) *(Withdrawn)*

**1685-11-G:** The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Active Wall Inc. (Respondent) *(Withdrawn)*

**1701-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Spider Electrical Inc. (Respondent) *(Withdrawn)*

**1733-11-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Metro Painters (2004) Limited (Respondent) *(Granted)*

**1762-11-G:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Clear-Line Water Contractors Ltd. (Respondent) *(Granted)*

**1903-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Siemens Canada Limited, Building Technologies Division, Bruce Power LP (Respondent) *(Withdrawn)*

**1904-11-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Berkley Developments Inc. (Respondent) *(Withdrawn)*

**1924-11-G:** Labourers' International Union of North America, Local 837 (Applicant) v. Total Site Works Inc. (Respondent) *(Granted)*

**1930-11-G:** Labourers' International Union of North America, Local 506 (Applicant) v. T F Contracting Inc. (Respondent) *(Granted)*

**1959-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Symtech Innovations Ltd. (Respondent) *(Granted)*

**1960-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Symtech Innovations Ltd. (Respondent) *(Endorsed Settlement)*

**1964-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Stucor Construction Ltd. (Respondent) *(Terminated)*

**1975-11-G:** Sheet Metal Workers' International Association Local 30 (Applicant) v. Quanza Roofing Ltd. (Respondent) *(Withdrawn)*

**1991-11-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Ducan Ceiling & Walls Systems of Oshawa Limited (Respondent) *(Dismissed)*

**2001-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping & Excavation Ltd. (Respondent) *(Granted)*

**2010-11-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Ferguson Neudorf Glass Inc. (Respondent) *(Granted)*

**2052-11-G:** The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. E. McLachlan Enterprises (Lobo) Limited (Respondent) *(Granted)*

# APPEALS – EMPLOYMENT STANDARDS ACT

**0811-10-ES:** Shield Protection Services Ltd. operating as Shield Protective Services (Applicant) v. David S. Kane and, Director of Employment Standards (Respondent) *(Dismissed)*

**1160-10-ES:** Shield Protection Services Ltd. operating as Shield Protective Services (Applicant) v. Adam B. Mangal and, Director of Employment Standards (Respondent) *(Dismissed)*

**1455-10-ES:** Bill Thomson, a Director of 2012710 Ontario Inc. (Applicant) v. Ashley Sookdeo and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1708-10-ES:** Dennis Timbrell, a director of Envizion Solutions Inc. (Applicant) v. Richard L. Saunders and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2994-10-ES:** Topknotch Prep & Print Ltd. (Applicant) v. Leena Bhatia and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2999-10-ES; 3267-10-ES; 3268-10-ES:** Priyance Hospitality Inc. o/a Radisson Plaza Mississauga Toronto Airport (Applicant) v. Doris Bertrand and, Director of Employment Standards (Respondent); Priyance Hospitality Inc. o/a Radisson Plaza Mississauga Toronto Airport (Applicant) v. Brenda Maccarone and, Director of Employment Standards (Respondent); Brenda Mariela Maccarone (Applicant) v. Priyance Hospitality Inc. o/a Radisson Plaza Mississauga Toronto Airport and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3015-10-ES:** Jennifer L C Fulton (Applicant) v. Creative Education of Canada Inc., and Director of Employment Standards (Respondent) *(Withdrawn)*

**3112-10-ES:** Exchange Corporation Canada Inc. DBA Ice Currency Services (Applicant) v. Karla Soto and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3214-10-ES:** Vari-Form Inc. (Applicant) v. Louie Baldinelli and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3215-10-ES:** Vari-Form Inc. (Applicant) v. Wendy Windis and, Director of Employment Standards (Respondent) *(Withdrawn)*

**3279-10-ES:** Diamond in the Ruff Pet Retreat (Applicant) v. Tara L. Faller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3295-10-ES:** 1635555 Ontario Inc. Operating as Brand Name Shoe Warehouse (Applicant) v. Barbara McClay, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3412-10-ES:** Holiday Inn Express Milton (Applicant) v. Priti Patel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3460-10-ES:** Gina Imperial Gunay (Applicant) v. John and Fernanda Oliveira, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3467-10-ES; 3606-10-ES:** Gheorghe Negoita (Applicant) v. Progressive Machinery Inc. and, Director of Employment Standards (Respondent) *(Granted)*; Progressive Machinery Inc. (Applicant) v. Gheorghe Negoita and, Director of Employment Standards (Respondent) *(Dismissed)*

**3551-10-ES:** Keay Nursing Homes o/a E.J. Mcquigge Lodge (Applicant) v. Carrie St Louis, and Director of Employment Standards (Respondent) *(Withdrawn)*

**3607-10-ES:** Raul Sukraj, a director of Captive Channel Corporation (Applicant) v. Aaron Smith and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
**3650-10-ES:** JM Food Services Ltd. (Applicant) v. Assia Kaci and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3720-10-ES:** Directions East Retail Ltd. (Applicant) v. Alissa Petti and, Director of Employment Standards (Respondent) *(Dismissed)*

**3919-10-ES:** Bruno Zaffino (Applicant) v. Marton Embeli and, Director of Employment Standards (Respondent) *(Dismissed)*

**3994-10-ES:** Wireless Communications Plus (Applicant) v. Paul Verasammy and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3995-10-ES:** Wireless Communications Plus (Applicant) v. Sajad Hosein and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4087-10-ES:** Comet Chemical Company Ltd. (Applicant) v. Ralph Dean,, Derek Coutts, and Director of Employment Standards (Respondent) *(Withdrawn)*

**4117-10-ES:** Hudson's Bay Company (Applicant) v. Jasna Bacvic-Khan and, Director of Employment Standards (Respondent) *(Withdrawn)*

**4118-10-ES:** Fleet Street Financial Corporation (Applicant) v. Lynn Kane, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4119-10-ES:** Fleet Street Financial Corporation (Applicant) v. Anson Martin and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4120-10-ES:** Fleet Street Financial Corporation (Applicant) v. Naim Sefedini and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4121-10-ES:** Fleet Street Financial Corporation (Applicant) v. Ben Kane, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4123-10-ES:** Fleet Street Financial Corporation (Applicant) v. John Goral and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4124-10-ES:** Fleet Street Financial Corporation (Applicant) v. Sunendra (Omar) Persaud and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4126-10-ES:** Fleet Street Financial Corporation (Applicant) v. Ujkan Zhitija and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4127-10-ES:** Fleet Street Financial Corporation (Applicant) v. Peter Weigel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4175-10-ES:** 1188056 Ontario Limited operating as Embassy Restaurant (Applicant) v. Sabrina-Mae Parise and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4214-10-ES:** Derek Wilson (Applicant) v. Sagamo Habour Shops Limited o/a Boston Pizza, and Director of Employment Standards (Respondent) *(Dismissed)*

**4316-10-ES:** Charles Fredrik Hanson and (Applicant) v. Otrex Holdings Inc. and, Gordon Creative Group, Gordon Group, Gordongroup Marketing + Communications, The Gordon Group, a Division of Otrex Communications Inc. and, Gordongroup Dubai and, Robert Chitty and, Howard Whittaker and, Thomas Krayer, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0070-11-ES:** 972303 Ontario Limited o/a Zero Venti Bambini (Applicant) v. Rita Tersigni and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0122-11-ES:** Wild Wing Belleville Inc. (Applicant) v. Kelli Walsh and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0162-11-ES:** The Staffing Connection (Applicant) v. Keith Crawford, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0236-11-ES:** Paola White (Applicant) v. Tora Bolton Limited o/a Giant Tiger Bolton, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0340-11-ES:** Debra A. Merritt (Applicant) v. 1826991 Ontario Inc. o/a Forest Golf and Country Hotel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0353-11-ES:** Anita Whitworth (Applicant) v. R.M.R. Real Estate Limited o/a Coldwell Banker RMR Real Estate Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0357-11-ES:** Sharita Denny (Applicant) v. MSI Health International Incorporated and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0379-11-ES:** Marie J St. Hilaire (Applicant) v. 2139770 Ontario Inc. o/a The Ravines Seniors' Suites and Retirement Residence, Director f Employment Standards (Respondent) *(Endorsed Settlement)*

**0387-11-ES:** Euroharvest Bakery Wholesalers Inc. (Applicant) v. Ivan Flamenco and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0391-11-ES:** Hospitality Resorts Inc. (Applicant) v. David Luey, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0431-11-ES:** Ideal Donut Company Limited o/a Ideal Donuts (Applicant) v. Dorothy Miller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0517-11-ES:** Camp 6 Contractors Limited (Applicant) v. Paul Caldwell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0518-11-ES:** Camp 6 Contractors Limited (Applicant) v. Michael Scinski and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0519-11-ES:** Camp 6 Contractors Limited (Applicant) v. Allen Houston and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0520-11-ES:** Camp 6 Contractors Limited (Applicant) v. David Murphy and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0521-11-ES:** Camp 6 Contractors Limited (Applicant) v. Jeannott Landry and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0522-11-ES:** Camp 6 Contractors Limited (Applicant) v. Glen Gordon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0523-11-ES:** Camp 6 Contractors Limited (Applicant) v. Vincent Tesoro and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0524-11-ES:** Camp 6 Contractors Limited (Applicant) v. Derek Cruikshank and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0525-11-ES:** Camp 6 Contractors Limited (Applicant) v. Terrence Sears and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0582-11-ES:** Georgian Bay Lawn and Snow (Applicant) v. Chris Giles, Director of Employment Standards (Respondent) *(Terminated)*

**0591-11-ES:** Huronia Machining Services Inc. (Applicant) v. John Barnes and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0618-11-ES:** Penwood Custom Manufacturing Ltd. (Applicant) v. William Ha and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0634-11-ES:** Jamie Pitre (Applicant) v. Elite Technologies Video Data Security Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0669-11-ES:** Bonnie Hoy operating as Bonnie Hoy Associates (Applicant) v. Wendy Howard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0683-11-ES:** 1807687 Inc. o/a Satpanth Capital Inc. (Applicant) v. Kubendra Naidoo and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0754-11-ES:** Multy Home LP (Applicant) v. Heron Bachan and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0764-11-ES:** 1658018 Ontario Inc. o/a La Cucina Restaurant (Applicant) v. Connie Raso and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0840-11-ES:** 3597717 Canada Limited and Dr. Tony Jauhal (Applicant) v. Adeel Makhail and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0847-11-ES:** L. V. Rose Int. Tr. Ltd. operating as RTL-Reliable Transportation Link (Applicant) v. Gwen Pinelli and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0914-11-ES:** Canadian and American Pardons Inc. (Applicant) v. Michelle Forshaw and, Director of Employment Standards (Respondent) *(Terminated)*

**0936-11-ES:** Building Blocks Academy Inc. (Applicant) v. Paula Albertini and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0967-11-ES:** Steve S. Cox (Applicant) v. Harding the Fire Place Ltd. o/a Harding Heating and Air Conditioning and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0969-11-ES:** Rajvir Phangureh (Applicant) v. SCM Supply Chain Management Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1073-11-ES:** Total Security Management Services Inc. (Applicant) v. Hamid Baig and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1090-11-ES:** Paria Moghaddampour (Applicant) v. Kathleen Golfo and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1094-11-ES:** Guy G. Doxey (Applicant) v. Frank Stollery Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1095-11-ES:** Willand Ltd. operating as Willand Ground Maintenance Ltd. (Applicant) v. Sebastien Georgescu and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1125-11-ES:** Cameron Stewart (Applicant) v. Rona Ontario Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1201-11-ES:** Global Horticultural Inc. (Applicant) v. Aurellano Gamboa and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1204-11-ES:** Rob Rapiti operating as BLR Entertainment (Applicant) v. Kurtis Maas and, Director of Employment Standards (Respondent) *(Dismissed)*

**1206-11-ES:** NCO Financial Services, Inc./Services Financiers NCO, Inc. (Applicant) v. Tracey Savage and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1216-11-ES:** SB Towing Inc. (Applicant) v. Robert Poole and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1223-11-ES:** Zuchter Berk Creative Caterers Inc. (Applicant) v. Cassandra Ryndenko and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1224-11-ES:** Zuchter Berk Creative Caterers Inc. (Applicant) v. Fabienne Shessel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1268-11-ES:** FAG Aerospace Inc. operating as FAG Aerospace Canada / Schaeffler Inc. (Applicant) v. Sieglinde Korb and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1270-11-ES:** Dr. Mary Lynn Tassatto (Applicant) v. Thunder Bay Regional Research Institute and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1288-11-ES:** AJ Flooring Ltd. Operating as AJ Flooring (Applicant) v. Nicholas Leyte and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1312-11-ES:** Anthony Young (Applicant) v. Reid Group Truck & Trailer Corporation and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1374-11-ES:** David Kenney Decks Inc. (Applicant) v. Andrew Peterson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1472-11-ES:** Dilip Kumar Ghosh (Applicant) v. Sonitek Payphones & Telecom Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1481-11-ES:** 2208732 Ontario Inc. o/a Jungaroo Indoor Playcenter (Applicant) v. Ashley Lucier, and Director of Employment Standards (Respondent) *(Dismissed)*

**1545-11-ES:** Skylar Lee o/a Lee General Contracting (Applicant) v. Jason Brown and, Director of Employment Standards (Respondent) *(Dismissed)*

**1555-11-ES:** Qing Lei (Applicant) v. 6010288 Canada Inc. o/a Bytown Bookkeeping & Accounting Services and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1556-11-ES:** Cyprus Contracting Inc. (Applicant) v. Scott Beaumount and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1577-11-ES:** Da Nian Huang (Applicant) v. Shiu Pong Group Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1612-11-ES:** Babubhai Maru Director of 6413412 Canada Inc. (Applicant) v. Ladani Niranjan T, Director Of Employment Standards (Respondent) *(Terminated)*

**1643-11-ES:** Harnn and Thann Canada Inc. (Applicant) v. Shanti Raffelt, Director Of Employment Standards (Respondent) *(Terminated)*

**1658-11-ES:** Michael Angelo's Market Place Inc. (Applicant) v. Bill Siekris and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1711-11-ES:** Joan Alice Larsen o/a Stigmata Tattoo (Applicant) v. Steven Plum and, Director of Employment Standards (Respondent) *(Dismissed)*

**1721-11-ES:** Knights on Guard Security Surveillance Systems Corporation (Applicant) v. Rakesh Singh, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1732-11-ES:** Benson Group Inc. (Applicant) v. Gerard Szaulis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1766-11-ES:** Carmine Giordano (Applicant) v. Home Depot of Canada Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

**1880-11-ES:** The Golden Razor Limited (Applicant) v. Terri Gelinas, and Director of Employment Standards (Respondent) *(Terminated)*

**1881-11-ES:** The Golden Razor Limited (Applicant) v. Alexis Sovie, and Director of Employment Standards (Respondent) *(Terminated)*

**1882-11-ES:** The Golden Razor Limited (Applicant) v. Anna Riley, and Director of Employment Standards (Respondent) *(Terminated)*

**2026-11-ES:** Tonia Butwick (Applicant) v. Sherland Forde Media Strategies Inc. o/a Forde & Semple Media Works and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

## APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

**0565-10-HS:** Stirling Chemicals Inc. (Applicant) v. Shela Mirza, Inspector (Respondent) v. Mike Ollivierre (Intervener) *(Withdrawn)*

**0656-11-HS:** CSH Oak Park LaSalle Inc. (Applicant) v. C.A.W. Local 2458 and, R. Taggart, Inspector (Respondent) *(Withdrawn)*

**1305-11-HS:** Elementary Teachers' Federation of Ontario (Applicant) v. Upper Grand District School Board and, Allen Cesekas, Inspector (Respondent) *(Withdrawn)*

**1390-11-HS:** Mammoet Crane Inc. (Applicant) v. Derek Miles, Inspector (Respondent) *(Withdrawn)*

**1546-11-HS:** Lake City Foods (Applicant) v. David Johnson and, Joe Zaher, Inspector (Respondent) *(Withdrawn)*

**1890-11-HS:** Ajax Pickering News Advertiser (Applicant) v. Caroline Monize, Melissa Cook - Inspector MOL (Respondent) *(Withdrawn)*

## REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

**3782-10-M:** Canadian National Federation of Independent Unions (Applicant) v. The Good Shepherd Centre Hamilton-Emmanuel House (Respondent) *(Withdrawn)*

## COMPLAINTS UNDER THE PUBLIC INQUIRIES ACT

**1753-11-PI:** Eunice Barfoot (Applicant) v. Sadler's Home Hardware (Respondent) *(Dismissed)*

## PROJECT AGREEMENT APPLICATIONS (S.163.1(1))

**0942-11-PR:** Sarnia Construction Association as agent for NOVA Chemicals (Applicant) v. International Brotherhood of Boilermakers, Iron, Shipbuilders, Blacksmiths, Forgers and Helpers, Local Union 128, Brick and Allied Craft Union of Canada, Local 23, United Brotherhood of Carpenters and Joiners of America, Local 1256, Operative Plasterers' and Cement Masons International Association of the United States and Canada, Local Union 598, International Brotherhood of Electrical Workers, Local 530, International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, International Association of Bridge, Structural and Ornamental Ironworkers, Local 700, Labourers' International Union of North America, Local 1089, Millwrights United Brotherhood of Carpenters and Joiners of America, Local 1592, International Union of Operating Engineers, Local 793, The Ontario Council of the International Brotherhood of Painters and Allied Trades Local Union 1590, Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union 124, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 663, Refrigeration Workers Local Union 787, Rodmen International Association of Bridge, Structural and Ornamental Ironworkers Local Union 700, Roofers Sheet Metal Workers International Association Local 539, Sheet Metal Workers International Association, Local 539, Sprinkler Pipefitter Ontario Pipe Trades Council Local 853, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Union 879, Marble Tile and Terrazzo Workers Brick and Allied Craft Union of Canada Local Union 23 (Respondent) *(Terminated)*

## APPEAL - PUBLIC SECTOR COMPENSATION RESTRAINT TO PROTECT PUBLIC SERVICES ACT, 2010

**1158-11-RB:** Pablo Argarate, Michael Attridge, Michael Bramah, Richard Carter, Lee Cormie, Darren Dias, Gabrielle Earnshaw, David Hagelaar, Steve Hoselton, Christian McConnell, Noel McFerran, John McLaughlin, Michael O'Connor, Margaret O'Gara, Dennis O'Hara, Remi Pulwer, Colleen Shantz, Mary Ellen Sheehan, T. Allan Smith (Applicant) v. The University of St. Michael's College (Respondent) *(Dismissed)*

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**1237-09-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Westendorp Demolition and, John Westendorp Enterprises Inc. (Respondent) *(Dismissed)*

**2781-09-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Aragon (Hockley) Development Corporation and Aragon Properties Ltd. (Respondent) *(Dismissed)*

**2922-09-U:** United Brotherhood of Carpenters and Joiners of America, Local Union 1256 (Applicant) v. United Brotherhood of Carpenters and Joiners of America (Respondent) *(Granted)*

**3394-10-U:** John Fredy Zuluaga de los Rios (Applicant) v. United Food & Commercial Workers Canada, Local 1000A (Respondent) v. Maple Leaf Consumer Foods, Toronto Poultry (Intervener) *(Dismissed)*

**1183-11-R:** Fatimah Zane (Applicant) v. The United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Respondent) v. Kensington Place Retirement Residence (Intervener) *(Dismissed)*

**1236-11-G:** The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Brett Doucette and Ryan Sutton c.o.b. as High Tech Glass (Respondent) *(Dismissed)*

**1483-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Canasoil Construction Inc. (Respondent) *(Dismissed)*

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING OCTOBER 2011

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**1661-08-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Superior Boiler Works and Welding Limited (Respondent) v. Canadian National Federation of Independent Unions (Intervener)

Unit: "all plumbers and plumbers' apprentices and all steamfitters and steamfitters' apprentices in the employ of Superior Boiler Works and Welding Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all steamfitters and steamfitters' apprentices in the employ of Superior Boiler Works and Welding Limited in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit)

**1848-08-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent) v. Canadian National Federation of Independent Unions (Intervener)

Unit: "all refrigeration and air conditioning mechanics and refrigeration and air conditioning mechanics' apprentices in the employ of Superior Boiler Works and Welding Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and foreman all refrigeration and air conditioning mechanics and refrigeration and air conditioning mechanics' apprentices in the employ of Superior Boiler Works and Welding Limited in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**4010-09-R:** The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Princeton Painters Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Princeton Painters Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Princeton Painters Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

**3330-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1767085 Ontario Inc. o/a Abcon Drywall & Acoustic/ Acquistic (Respondent)

Unit: "all painters and painters' apprentices in the employ of 1767085 Ontario Inc. o/a Abcon Drywall & Acoustic in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of 1767085 Ontario Inc. o/a Abcon Drywall & Acoustic in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non working foreman, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**0061-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Neil H. Dellandrea o/a Space-Craft Design (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Neil H. Dellandrea o/a Space-Craft Design in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Neil H. Dellandrea o/a Space-Craft Design in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**0135-11-R:** Ontario Pipe Trades Council United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Facca Incorporated (Respondent) v. Labourers' International Union of North America, Local 625 (Intervener)

Unit: "all plumbers and plumbers' apprentices in the employ of Facca Incorporated in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices in the employ of Facca Incorporated in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**0654-11-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Affordable Plumbing & Mechanical Inc. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Affordable Plumbing & Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Affordable Plumbing & Mechanical Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1138-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 535050 Ontario Inc. o/a Suburban Drywall (Respondent)

Unit: "of all carpenters and carpenters' apprentices in the employ of 535050 Ontario Inc. o/a Suburban Drywall in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and of all carpenters and carpenters' apprentices in the employ of 535050 Ontario Inc. o/a Suburban Drywall in all sectors of the construction industry in the United Counties of Stormont, Dundas and Glengarry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

**1413-11-R:** Brick and Allied Craft Union of Canada (Applicant) v. Bastien Bros. Masonry Limited (Respondent)

Unit: "all bricklayers, bricklayers¿ apprentices, stonemasons and stonemasons; apprentices in the employ of Bastien Bros. Masonry Limited in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, in all sectors of the construction industry, save and except non-working foremen and persons above the rank of non- working foreman" (8 employees in unit)

**1571-11-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Ardoch Electric Inc. (Respondent)

Unit: "all electricians, electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Ardoch Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians, electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Ardoch Electric Inc. in all sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**1797-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lorna Marie Hubert o/a Niagara Traffic Services (Respondent)

Unit: "all construction labourers in the employ of Lorna Marie Hubert o/a Niagara Traffic Services in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former county of Haldimand in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

**1936-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2054978 Ontario Inc. cob as International Arena Products (Respondent)

Unit: "all carpenters and carpenters apprentices in the employ of 2054978 Ontario Inc. cob as International Arena Products in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters apprentices in the employ of 2054978 Ontario Inc. cob as International Arena Products in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (7 employees in unit)

**2047-11-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Prescott Masonry & Restorations Inc. (Respondent)

Unit: "all journeymen bricklayers and stonemasons and their respective apprentices and assistants in the employ of Prescott Masonry & Restorations Inc. in all sectors of the construction industry in the County of Wellington and the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2117-11-R:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. D & D Construction Services, Division of 1708371 Ontario Ltd. (Respondent)

Unit: "all journeymen and apprentice insulators and asbestos workers in the employ of D & D Construction Services, Division of 1708371 Ontario Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice insulators and asbestos workers in the employ of D & D Construction Services, Division of 1708371 Ontario Ltd. in all sectors of the construction industry in the City of

Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (6 employees in unit)

**2168-11-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Feldt Electric Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Feldt Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Feldt Electric Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

**2230-11-R:** International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Stewart Electric of Wyoming Inc. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Stewart Electric of Wyoming Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Stewart Electric of Wyoming Inc. in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman." (5 employees in unit)

**2363-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sal-Dan General Contractors Inc., Sal-Dan Developments Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the Sal-Dan General Contractors Inc., Sal-Dan Developments Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Sal-Dan General Contractors Inc., Sal-Dan Developments Ltd. in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (13 employees in unit)

## Bargaining Agents Certified Subsequent to Vote

**1311-11-R:** Ontario Workers' Union (Applicant) v. William Osler Health System (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all full time office and clerical employees of the William Osler Health System, save and except supervisors, persons above the rank of supervisor, secretaries to the President and CEO, Vice Presidents, Directors, Administrative Directors, Medical Chief of Staff, Medical Chiefs of Service, Persons regularly employed for not more than twenty-four (24) hours per week, persons employed for school vacation periods and employees covered by other collective agreements" (263 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 289 |
| Number of persons who cast ballots | 168 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 164 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 4 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 111 |
| Number of ballots marked against applicant | 52 |
| Number of ballots segregated and not counted | 4 |

**1364-11-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all employees of Humber River Regional Hospital in the Metropolitan Toronto, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dieticians, technical personnel, supervisors and foremen, persons above the rank of supervisors and foremen, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods, and persons covered by subsisting collective agreements" (324 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 324 |
| Number of persons who cast ballots | 215 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 191 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 3 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 21 |
| Number of spoiled ballots | 3 |
| Number of ballots marked in favour of applicant | 130 |
| Number of ballots marked against applicant | 75 |
| Number of ballots segregated and not counted | 7 |

**1371-11-R:** Ontario Workers' Union (Applicant) v. William Osler Health System (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all office and clerical employees of the William Osler Health System, regularly employed for not more than twenty-four (24) hours per week, save and except supervisors, persons above the rank of supervisor, secretaries to the President and CEO, Vice-Presidents, Directors, Administrative Directors, Medical Chief of Staff, Medical Chiefs of Service, and employees covered by other collective agreements" (276 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 276 |
| Number of persons who cast ballots | 137 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 136 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |

| | |
|---|---|
| Number of ballots marked in favour of applicant | 80 |
| Number of ballots marked against applicant | 56 |
| Number of ballots segregated and not counted | 1 |

**1672-11-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all employees of Humber River Regional Hospital in Metropolitan Toronto, Ontario regularly employed for not more than twenty-four (24) hours per week, and students employed during the school vacation period, save and except professional medical staff, graduate and undergraduate nursing staff, paramedical and technical employees, supervisors, persons above the rank of supervisor, and persons covered by subsisting collective agreements" (322 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 350 |
| Number of persons who cast ballots | 139 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 137 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 5 |
| Number of ballots marked in favour of applicant | 87 |
| Number of ballots marked in favour of intervener | 45 |
| Number of ballots segregated and not counted | 2 |

**1761-11-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all office and clerical employees of Humber River Regional Hospital in Metropolitan Toronto, regularly employed for not more than twenty-four hours per week and students employed during the school vacation periods, save and except supervisors, foremen, persons above the rank of supervisor and foreman, one secretary to each of the following: Executive Director, Assistant Executive Directors, Director of Purchasing, Business Office Supervisor, Admitting Supervisor, Communications Supervisor, Occupational Health Co-ordinator, and persons covered by subsisting collective agreements" (170 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 181 |
| Number of persons who cast ballots | 86 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 65 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 21 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 43 |
| Number of ballots marked in favour of intervener | 38 |
| Number of ballots segregated and not counted | 4 |

**1807-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lorna Marie Hubert o/a Niagara Traffic Services (Respondent)

Unit: "all employees of Lorna Marie Hubert o/a Niagara Traffic Services engaged as flag persons in and out of the Regional Municipality of Niagara, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (17 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 19 |
| Number of persons who cast ballots | 17 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 13 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 7 |
| Number of ballots marked against applicant | 6 |
| Number of ballots segregated and not counted | 4 |

**1856-11-R:** Canadian Union of Public Employees (Applicant) v. Business Education Council of Niagara (Respondent)

Unit: "all employees employed by the Business Education Council of Niagara in the Regional Municipality of Niagara, save and except supervisors and persons above the rank of supervisor, administrative support staff and students" (17 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 25 |
| Number of persons who cast ballots | 25 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 17 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 8 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 12 |
| Number of ballots marked against applicant | 5 |
| Number of ballots segregated and not counted | 8 |

**1940-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. Evergreen Mississauga CCRC Limited Partnership (Respondent)

Unit: "all employees of Evergreen Mississauga CCRC Limited Partnership in the city of Mississauga, save and except supervisors, persons above the rank of supervisor and office and clerical" (55 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 52 |
| Number of persons who cast ballots | 50 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 42 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' | 7 |

| | |
|---|---|
| list | |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 30 |
| Number of ballots marked against applicant | 13 |
| Number of ballots segregated and not counted | 6 |

**1947-11-R:** United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Canadian Mini-Warehouse Properties Company (Respondent)

Unit: "all Property Managers, Assistant Property Managers, Relief Property Managers and Maintenance Managers employed by Canadian Mini-Warehouse Properties Company in the City of Brampton, City of Oakville, City of Toronto and City of Mississauga save and except District Managers, persons above the rank of District Manager, Regional Managers, and office and administrative staff" (66 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 66 |
| Number of persons who cast ballots | 10 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 10 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 7 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 0 |

**2060-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. St. Joseph's Motherhouse (Respondent)

Unit: "all employees of St. Joseph's Motherhouse in the city of North Bay employed as Switch Board Operators save and except supervisors, foreman or forelady, persons above the rank of supervisor, members of the Congregation of the Sisters of St Joseph, teaching staff, registered and graduated nurses, security guards, administration staff, students employed in the summer and all other employees covered by an existing collective agreement" (5 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 5 |
| Number of persons who cast ballots | 4 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 3 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 1 |

**2129-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. Chartwell Select Thunder Bay (Respondent)

Unit: "all employees of Chartwell Select Thunder Bay in the city of Thunder Bay save and except supervisor, persons above the rank of supervisor and office and clerical." (33 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 33 |
| Number of persons who cast ballots | 24 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 24 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 24 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**2158-11-R:** United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. H & M Hennes & Mauritz Inc. (Respondent)

Unit: "all Full-Time and Part-Time Sales Advisors of H & M Hennes & Mauritz Inc. retail store located at the Square One Shopping Centre on 100 City Centre Drive, in the City of Mississauga, save and except Visual Merchandisers/Managers, Cash Office Managers, Department Managers, those above the rank of Department Manager, Office and Clerical Staff, Seasonal Staff, and all employees not situated in the retail store" (47 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 47 |
| Number of persons who cast ballots | 38 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 38 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 23 |
| Number of ballots marked against applicant | 15 |
| Number of ballots segregated and not counted | 0 |

**2183-11-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Municipality of Brighton (Respondent)

Unit: "all Employees employed by the Municipality of Brighton in the County of Northumberland County save and except supervisors and persons above the rank of supervisor, the Deputy Clerk and the Administrative Assistant to the CAO and Mayor" (35 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 39 |
| Number of persons who cast ballots | 29 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 29 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 18 |
| Number of ballots marked against applicant | 11 |
| Number of ballots segregated and not counted | 0 |

**2189-11-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Housekeepers of Canada Inc. (Respondent)

Unit: "all employees of Housekeepers of Canada Inc. engaged in cleaning and building services at Toyota Motor Manufacturing Canada Inc., 1717 Dundas Street, Woodstock, Ontario, save and except supervisors, persons above the rank of supervisor and office staff" (24 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 24 |
| Number of persons who cast ballots | 21 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 21 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 12 |
| Number of ballots marked against applicant | 9 |
| Number of ballots segregated and not counted | 0 |

**2193-11-R:** Canadian Union of Public Employees (Applicant) v. Durham Retirement Residence Limited c.o.b. as Traditions of Durham (Respondent)

Unit: "all Employees employed by Durham Retirement Residence Limited Partnership c.o.b. as Traditions of Durham in the Region of Durham save and except Office, Clerical, Supervisors and those above the rank of Supervisors" (37 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 37 |
| Number of persons who cast ballots | 30 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 23 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 7 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 16 |
| Number of ballots marked against applicant | 7 |
| Number of ballots segregated and not counted | 7 |

**2278-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Landmark Inn Limited Partnership c.o.b. as Landmark Inn (Respondent)

Unit: "all employees of Landmark Inn Limited Partnership c.o.b. as Landmark Inn working at the Landmark Inn located in Thunder Bay, Ontario, save and except Supervisors, persons above the rank of Supervisor, Office and Clerical Staff" (74 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 85 |
| Number of persons who cast ballots | 54 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 48 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 45 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 6 |

**2311-11-R:** Ontario Public Service Employees Union (Applicant) v. The Elizabeth Fry Society of Ottawa (Respondent)

Unit: "all employees of The Elizabeth Fry Society of Ottawa in the City of Ottawa, save and except office and clerical staff, supervisors and persons above the rank of supervisor" (35 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 36 |
| Number of persons who cast ballots | 28 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 27 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 15 |
| Number of ballots marked against applicant | 13 |
| Number of ballots segregated and not counted | 0 |

**2319-11-R:** Ontario Public Service Employees Union (Applicant) v. St. Francis Memorial Hospital (Respondent)

Unit: "all paramedical employees of St. Francis Memorial Hospital in Renfrew County save and except managers, persons above the rank of managers, and persons for whom any trade union held bargaining rights as of October 13th, 2011" (14 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 15 |
| Number of persons who cast ballots | 7 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 7 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 7 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

## Applications for Certification Dismissed Without Vote

**3586-09-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Belview Stucco Design Ltd. (Respondent)

## Applications for Certification Dismissed Subsequent to Vote

**2163-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Woodbridge Painting Company Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all painters and painters' apprentices in the employ of the responding party in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, the County of Simcoe and the District Municipality of Muskoka, the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non-working foreman" (32 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 29 |
| Number of persons who cast ballots | 19 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 19 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 2 |
| Number of ballots marked against applicant | 17 |
| Number of ballots segregated and not counted | 0 |

**1938-11-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Forte Fixtures & Millwork Inc., and Forte Fixtures Inc., and Metro Acrylic Fabricators Inc. (Respondent)

Unit: "all employees of the Responding Parties working at or out of 671 Westburne Drive in the City of Vaughan save and except supervisor and those above the rank of supervisor, office, clerical and sales staff" (40 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 48 |
| Number of persons who cast ballots | 48 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 42 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 14 |
| Number of ballots marked against applicant | 28 |
| Number of ballots segregated and not counted | 6 |

**2045-11-R:** Health Care and Service Workers Union, Local 304 Affiliated with Christian Labour Association of Canada (Applicant) v. Pinecrest Manor Nursing Home (Respondent) v. Service Employees International Union Local 1 Canada (Intervener)

Unit: "all employees of Pinecrest Manor Nursing Home in Lucknow, Ontario, save and except Professional Medical Staff, Registered Nurses, Graduate Nurses, Physiotherapists, Occupational Therapists, Supervisors, persons above the rank of Supervisor, and Office staff" (71 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 72 |
| Number of persons who cast ballots | 56 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 56 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 15 |
| Number of ballots marked in favour of intervener | 41 |
| Number of ballots segregated and not counted | 0 |

**2079-11-R:** Canadian Union of Public Employees (Applicant) v. Canadian Red Cross Society (Respondent)

Unit: "all service coordinators employed by the Canadian Red Cross Cornwall Stormont Dundas, Glengarry Branch in the City of Cornwall, Ontario, save and except Supervisors and persons above the rank of supervisor, volunteers and any employee already represented by a trade union." (55 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 60 |
| Number of persons who cast ballots | 47 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 43 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 4 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 14 |
| Number of ballots marked against applicant | 30 |
| Number of ballots segregated and not counted | 3 |

**2209-11-R:** Amalgamated Transit Union, Local 846 (Applicant) v. Canadian Red Cross (Respondent)

Unit: "all para-transit drivers of the Canadian Red Cross in the Niagara Region, save and except Supervisors and those above the rank of Supervisor, office staff and dispatchers." (26 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 28 |
| Number of persons who cast ballots | 28 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 26 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 2 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 13 |
| Number of ballots marked against applicant | 13 |
| Number of ballots segregated and not counted | 2 |

**2238-11-R:** Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Halton (Respondent)

Unit: "all Maintenance and Tenant Service Workers employed in Asset Management Division of the Corporate Services Department of the Regional Municipality of Halton, save and except supervisors and persons above the rank of supervisors, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period and those employees already represented by a trade union" (13 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 13 |
| Number of persons who cast ballots | 10 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 10 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked against applicant | 6 |
| Number of ballots segregated and not counted | 0 |

## Applications for Certification Withdrawn

**2091-08-R; 2092-08-R; 2093-08-R; 2110-08-R; 2116-08-R; 2119-08-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Veolia ES Canada Industrial Services Inc. (Respondent) v. The National Capital Road Builders Association (Intervener); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Veolia ES Canada Industrial Services Inc. (Respondent) v. The National Capital Road Builders Association (Intervener); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Veolia ES Canada Industrial Services Inc. (Respondent); International Union of Operating Engineers, Local 793 (Applicant) v. Veolia ES Canada Industrial Services Inc. and/or, Veolia ES Sewer Services (Ottawa) Inc. (Respondent) v. The National Capital Road Builders Association (Intervener); International Union of Operating Engineers, Local 793 (Applicant) v. Veolia ES Canada Industrial Services Inc. (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Veolia ES Canada Industrial Services Inc. (Respondent)

**2603-08-R:** Labourers' International Union of North America Local 527 (Applicant) v. R.J. Bender Construction Ltd. (Respondent)

**3433-09-R:** United Brotherhood of Carpenters and Joiners of America, Local 27 (Applicant) v. Colombus Aluminum & Roofing Ltd. (Respondent) v. Sheet Metal Workers' International Association, Local 51 (Intervener)

**3954-09-R:** United Brotherhood of Carpenters and Joiners of America, Local 27 (Applicant) v. Burnhamthorpe Roofing Co. Ltd. (1994) (Respondent) v. Sheet Metal Workers' International Association, Local 51 (Intervener)

**0031-10-R:** Sheet Metal Workers' International Association, Local 51 (Applicant) v. Dominion Sheet Metal & Roofing Works (Respondent) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

**2971-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bevcon Construction & Paving Ltd. (Respondent)

**2983-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bevcon Construction & Paving Ltd. (Respondent)

**3715-10-R:** Canadian Union of Public Employees (Applicant) v. Hastings Children's Aid Society (Respondent)

**3841-10-R:** Labourers' International Union of North America, Local 625 (Applicant) v. Weathertech Restoration Services Inc. (Respondent)

**0739-11-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Event Medical Staff Inc. (Respondent)

**1408-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Bastien Bros. Masonry Limited (Respondent)

**2276-11-R:** United Food & Commercial Workers, Local 206 (Applicant) v. Primary Response Inc. (Respondent)

**2334-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Pharmx Rexall Drug Stores Ltd. (Respondent)

**2336-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Pharmx Rexall Drug Stores Ltd. (Respondent)

**2420-11-R:** Ontario Workers' Union (Applicant) v. Specialty Care Woodspark Inc. (Respondent)

## FIRST AGREEMENT - DIRECTION

**2124-11-FC:** National Organized Workers (Applicant) v. XS Cargo GP Inc. (Respondent) *(Withdrawn)*

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**1608-09-R; 1610-09-R** Canadian Union of Skilled Workers (Applicant) v. Bruce Power Limited Partnership and, Bruce Power A Limited Partnership (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Bruce Power Limited Partnership and, Bruce Power A Limited Partnership (Respondent) *(Withdrawn)*

**1780-09-R:** Ontario Pipe Trades Council and, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 800 (Applicant) v. Copper Cliff Mechanical and Steel Fabricating Limited, Copper Cliff Mechanical and Steel Fabricating (1994) Limited, CCM Contracting Ltd., Mine Tech Inc. and, Reasbeck Construction Inc. (Respondent) *(Withdrawn)*

**4053-10-R:** Sheet Metal Workers' International Association Local 30 (Applicant) v. Total Mechanical Systems Limited and, Total Mechanical Systems (2003) Ltd. (Respondent) *(Granted)*

**0065-11-R:** The Millwright Regional Council of Ontario and its Affiliated Local Unions (Applicant) v. Bricas Multi-Trade Inc. and, The Roberts Onsite Group Inc. (Respondent) *(Withdrawn)*

**0152-11-R:** International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 2223894 Ontario Inc. o/a DMAC Painting and, McKenzie General Contracting Inc. (Respondent) *(Granted)*

**1351-11-R:** Labourers International Union of North America, Local 527 (Applicant) v. 176929 Canada Inc. o/a Bradley Kelly Construction (Utilities) Limited, Bradley-Kelly Construction Ltd., Accurate Point Construction Ltd. (Respondent) *(Granted)*

**1737-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jesse Vock c.o.b. as Straight Line Forming and Crane Rental (An Unregistered Business Name), Jesse Vock c.o.b. as JCF (Respondent) *(Dismissed)*

**1939-11-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Forte Fixtures & Millwork Inc., and, Forte Fixtures Inc., and, Metro Acrylic Fabricators Inc. (Respondent) *(Withdrawn)*

## SALE OF A BUSINESS

**1608-09-R; 1610-09-R** Canadian Union of Skilled Workers (Applicant) v. Bruce Power Limited Partnership and, Bruce Power A Limited Partnership (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Bruce Power Limited Partnership and, Bruce Power A Limited Partnership (Respondent) *(Withdrawn)*

**1780-09-R:** Ontario Pipe Trades Council and, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 800 (Applicant) v. Copper Cliff Mechanical and Steel Fabricating Limited, Copper Cliff Mechanical and Steel Fabricating (1994) Limited, CCM Contracting Ltd., Mine Tech Inc. and, Reasbeck Construction Inc. (Respondent) *(Withdrawn)*

***2624-10-R:** Health and Safety Association for Government Services carrying on business as Public Services Health and Safety Association (Applicant) v. Canadian Office & Professional Employees Union, Local 24 (Respondent) *(Granted)*

Unit: "all employees of the Health and Safety Association for Government Services c.o.b. as Public Health and Safety Association, in the Province of Ontario, save and except, The Assistant to the Executive Director; Supervisor - Client Service Director – Prevention Services; the Director - Corporate Services; the Director - Program Development and all persons above the rank of Director." (45 employees in unit)

**4053-10-R:** Sheet Metal Workers' International Association Local 30 (Applicant) v. Total Mechanical Systems Limited and, Total Mechanical Systems (2003) Ltd. (Respondent) *(Granted)*

**0065-11-R:** The Millwright Regional Council of Ontario and its Affiliated Local Unions (Applicant) v. Bricas Multi-Trade Inc. and, The Roberts Onsite Group Inc. (Respondent) *(Withdrawn)*

**0152-11-R:** International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 2223894 Ontario Inc. o/a DMAC Painting and, McKenzie General Contracting Inc. (Respondent) *(Granted)*

**1351-11-R:** Labourers International Union of North America, Local 527 (Applicant) v. 176929 Canada Inc. o/a Bradley Kelly Construction (Utilities) Limited, Bradley-Kelly Construction Ltd., Accurate Point Construction Ltd. (Respondent) *(Granted)*

**1737-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jesse Vock c.o.b. as Straight Line Forming and Crane Rental (An Unregistered Business Name), Jesse Vock c.o.b. as JCF (Respondent) *(Dismissed)*

**1939-11-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Forte Fixtures & Millwork Inc., and, Forte Fixtures Inc., and, Metro Acrylic Fabricators Inc. (Respondent) *(Withdrawn)*

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0365-10-R:** Doug Mudford (Applicant) v. International Union of Operating Engineers Local 793 and bargaining agents affiliated with IUOE (Respondent) *(Dismissed)*

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Niacon Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (1 employee in unit)

**4060-10-R:** Aramark Canada Ltd. (Greenwood College School) (Applicant) v. UNITE HERE, Local 75 (Respondent) *(Granted)*

Unit: "all employees of the Employer, Aramark Canada Ltd. Engaged in cafeteria food service operations at Greenwood College School, 443 Mount Pleasant Road, Toronto, ON, save and except supervisors, persons above the rank of supervisor office and sales staff" (4 employees in unit)

**1869-11-R:** Build All Contractor's Employees c/o Keith Brant (Applicant) v. Labourers' International Union of North America, Local 247 (Respondent) v. Build-All Contractors (Intervener) *(Dismissed)*

Unit: "all construction labourers in the employ of Build-All Contractors in the County of Lennox & Addington, the County of Frontenac and the geographic Townships of Rear Leeds and Landsdowne, Rear of Yonge and Escott and all lands south thereof in the United Counties of Leeds and Grenville in all sectors of the construction industry excluding the industrial, commercial and institutional sector save and except non-working foreman and persons above the rank of non-working foreman." (15 employees in unit)

**2126-11-R:** University Health Network (Here in after called the "Employer") (Applicant) v. The Canadian Union of Public Employees Woman's Own Withdrawal Management Centre (Here in after called the ("Union") (Respondent) v. University Health Network (Intervener) *(Dismissed)*

**2206-11-R:** Tiffany Lamoureux (Applicant) v. Canadian Union of Public Employees and its Local 5056 (Respondent) v. Northdale Manor (Intervener) *(Dismissed)*

**2291-11-R:** Maria Lamanna, Sonia Di Marco, Baljit Toor, Sonia Del Bono-Augello (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) *(Dismissed)*

**2312-11-R:** Carmelite Day Nursery Employees (Applicant) v. Service Employment International Union (SEIU) Local 1 Canada (Respondent) *(Dismissed)*

**2327-11-R:** Sandra Gilfillan, Kim Howell & a group of part time employees of Sobeys Fort Erie (Applicant) v. United Food & Commercial Workers Canada Local 175 (Respondent) v. 1254363 Ontario Inc. c.o.b. Sobey's Fort Erie (Intervener) *(Granted)*

Unit: "all employees of Sobeys Fort Erie, in Fort Erie, Ontario regularly employed for not more than thirty-one (31) hours per week and students employed during the school vacation period, save and except the two (2) assistant store managers, persons above the rank of assistant store manager" (62 employees in unit)

**2328-11-R:** Registered Nurses of Tilbury Manor (Applicant) v. C.A.W. Canada Local 1941 (Respondent) v. Diversicare Tilbury Manor (Intervener) *(Dismissed)*

Unit: "Registered Nurses, and graduate nurses who are employed as graduate nurses at Tilbury Manor Nursing Home, in the municipality of Chatham-Kent." (6 employees in unit)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**1663-08-U; 1830-08-U; 1832-08-U; 2624-08-U; 0799-09-U; 3078-09-U; 3745-09-U; 2772-10-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Boiler Works and Welding Limited and (Respondent); Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 and, Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent); Ontario Pipe Trades Council United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent); Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Superior Boiler Works & Welding Ltd. (Respondent); Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67, and (Applicant) v. Superior Boiler Works & Welding Limited (Respondent) *(Terminated)*

**2818-09-U:** Henry James Martin (Applicant) v. CAW Local 127 (Respondent) *(Dismissed)*

**3807-09-U:** Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sheet Metal Workers' International Association, Local 51, Donia Aluminum & Roofing Limited (Respondent) *(Withdrawn)*

**3973-09-U:** David Bérard (Applicant) v. International Union of Operating Engineers, Local 772-A (Respondent) *(Dismissed)*

**3975-09-U:** Ontario Public Service Employees Union (Applicant) v. Art Gallery of Ontario (Respondent) *(Withdrawn)*

**2684-10-U:** Dung Nguyen (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 9042 (Respondent) v. Silex Innovations Inc. (Intervener) *(Dismissed)*

**2995-10-U:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bevcon Construction & Paving Ltd. (Respondent) *(Withdrawn)*

**3175-10-U:** Robert Vinodolac (Applicant) v. Ontario English Catholic Teachers' Association, Dufferin-Peel Catholic District School Board (Respondent) *(Dismissed)*

**3572-10-U:** Ghiansaroop Persaud (Applicant) v. Toronto Civic Employees' Union, Local 416 (Respondent) v. Toronto Community Housing Corporation (Intervener) *(Dismissed)*

**3753-10-U:** Donald Clarke (Applicant) v. Canadian Auto Workers Union (CAW-Canada), Local No. 127 (Respondent) v. Matinrea Ridgetown (Intervener) *(Dismissed)*

**3840-10-U:** Labourers' International Union of North America, Local 625 (Applicant) v. Weathertech Restoration Services Inc. and, Perry Oliver (Respondent) *(Withdrawn)*

**0136-11-U:** Ontario Pipe Trades Council United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Facca Incorporated (Respondent) *(Withdrawn)*

**0423-11-U:** Shawn Eastwood (Applicant) v. Ontario Secondary School Teacher's Federation (Respondent) v. Simcoe County District School Board (Intervener) *(Withdrawn)*

**0439-11-U:** Andrew Philip Scarlett (Applicant) v. Canadian Union of Public Employees Local 7800, then Canadian Union of Public Employees Local 4800 (Respondent) *(Dismissed)*

**0495-11-U:** Service Employees International Union Local 2 Brewery, General and Professional Workers' Union (Applicant) v. Apollo 8 Maintenance Services Inc (Respondent) *(Withdrawn)*

**0516-11-U:** Corey Willcott (Applicant) v. Teamsters Local Union 847 (Respondent) v. K-Bro Linen Systems Inc. (Intervener) *(Dismissed)*

**0529-11-U:** Sahiduzzaman Bhuiyan (Applicant) v. UNITE HERE Local 75 (Respondent) v. The Fairmont Royal York (Intervener) *(Dismissed)*

**0541-11-U:** Jacob R. Caldwell (Applicant) v. C.A.W. Local 414 (Respondent) *(Withdrawn)*

**0661-11-U:** Paul Gemme (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 9350 (Respondent) v. Timmins & District Hospital (Intervener) *(Dismissed)*

**0698-11-U:** Faisal Hussain (Applicant) v. Ontario Public Service Employees Union (OPSEU) (Respondent) *(Withdrawn)*

**0919-11-U:** International Association of Machinists and Aerospace Workers (Applicant) v. Event Medical Staff Inc. (Respondent) *(Withdrawn)*

**1155-11-U:** Henry Checko (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Natural Resources (Intervener) *(Terminated)*

**1188-11-U:** Mario Pessoa De Oliveira, Angela Davidson, Milan Kovacevic, Marlene Lewis, Brian Lewis, Union For Workers (Applicant) v. Sunnybrook Health Sciences Centre (Respondent) v. Service Employees International Union Local 1, Canada (Intervener) *(Withdrawn)*

**1298-11-U:** Milica Madjercic (Applicant) v. Canadian Union of Public Employees and its Local 1065 (Respondent) v. Joseph Brant Memorial Hospital (Intervener) *(Withdrawn)*

**1314-11-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (Applicant) v. NS Technologies Group Inc., Injection Division (Respondent) *(Withdrawn)*

**1445-11-U:** International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Harold Stecho Electric Ltd. (Respondent) *(Withdrawn)*

**1583-11-U:** Luisito J Gonzales (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 9197 (Respondent) *(Dismissed)*

**1626-11-U:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Frecon Electric Limited, Dean Drevniok, Frank Sabourin and, Ardoch Electric Inc. (Respondent) *(Withdrawn)*

**1779-11-U:** Martin Nylas (Applicant) v. Toronto Police Association (Respondent) *(Dismissed)*

**1868-11-U:** Canadian Union of Public Employees and its Local 5071 (Applicant) v. Nucleus Independent Living (Respondent) *(Withdrawn)*

**1899-11-U:** Carpenters' District Council of Ontario, Local 2041 (Applicant) v. Expertcom Construction Inc. (Respondent) *(Dismissed)*

**1941-11-U:** Association of Hebrew School Educators (Applicant) v. Robbins Hebrew Academy (a.k.a. United Synagogue Day School) (Respondent) *(Withdrawn)*

**2033-11-U:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2054978 Ontario Inc. cob as International Arena Products (Respondent) *(Withdrawn)*

**2087-11-U:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Forte Fixtures & Millwork Inc., and Forte Fixtures Inc., and Metro Acrylic Fabricators Inc. (Respondent) *(Withdrawn)*

**2128-11-U:** Sonny Chornley (Applicant) v. Canadian Auto Workers Union Local 199 (CAW) (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

**2152-11-U:** Kallistheni Vuckov (Applicant) v. Service Employees International Union, Local 220 (Respondent) *(Dismissed)*

**2161-11-U:** The Form Work Council of Ontario and Labourers' International Union of North America, Local 1059 (Applicant) v. Tricar Developments Inc. (Respondent) *(Withdrawn)*

**2239-11-U:** Bernard Joseph Morrissey (Applicant) v. LIUNA Local 183 (Respondent) v. The Wynn Group of Companies (Intervener) *(Withdrawn)*

**2264-11-U; 2265-11-U:** Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Applicant) v. Alco Janitorial Limited (Respondent) *(Withdrawn)*

**2273-11-U:** Ramiro Suarez-Garcia (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) *(Withdrawn)*

**2456-11-U:** Rudolph Brown (Applicant) v. Brand Aluma Systems (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener) *(Dismissed)*

## APPLICATION FOR INTERIM ORDER

**2068-11-M:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. European Quality Meats and Sausages (Respondent) *(Granted)*

## APPLICATIONS FOR CONSENT TO PROSECUTE

**1664-08-U; 1832-08-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Superior Boiler Works and Welding Limited and (Respondent) *(Terminated)*

**2142-11-U:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Frecon Construction Limited., Dean Drevniok, Frank Sabourin and, Ardoch Electric Inc. (Respondent) *(Withdrawn)*

## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**2111-11-M:** The Children's Aid Society of Hamilton (Applicant) v. The Canadian Union of Public Employees, Local 3899 Full Time Employees (Respondent) *(Granted)*

**2112-11-M:** The Children's Aid Society of Hamilton (Applicant) v. The Canadian Union of Public Employees, Local 3042 Full Time Employees (Respondent) *(Granted)*

**2113-11-M:** The Children's Aid Society of Hamilton (Applicant) v. The Canadian Union of Public Employees, Local 3042 Part Time Employees (Respondent) *(Granted)*

**2169-11-M:** Maple Leaf Consumer Foods Inc., United Food and Commercial Workers Canada, Local 175 (Applicant) v. (Respondent) *(Granted)*

## JURISDICTIONAL DISPUTES

**2142-10-JD:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. International Union of Painters and Allied Trades, Local 1795, Flynn Canada Ltd. (Respondent) *(Dismissed)*

**2190-10-JD:** IBEW Electrical Power Council of Ontario, International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Safeguards Technology LLC, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Respondent) v. Electrical Power Systems Construction Association (Intervener) *(Withdrawn)*

**4210-10-JD:** The Ontario Council of the International Union of Painters and Allied Trades and its Local Union 1590 (Applicant) v. Electrical Power Systems Construction Association, Bruce Power LP, Labourers International Union of North America, Local 1059 (Respondent) *(Granted)*

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**2422-Y6-M:** University of Windsor (Applicant) v. CUPE, Local 1393 (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 2458 (Office and Clerical Units and Operating Engineers Unit), CAW-Canada and its Local 195 (Campus Police Unit) (Intervener) *(Terminated)*

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**0672-10-OH:** Gerard F. Dunphy (Applicant) v. Primary Response Inc. (Respondent) *(Withdrawn)*

**2358-10-OH:** Oreri Towuru (Applicant) v. Chartwell Seniors Housing REIT (Respondent) *(Dismissed)*

**3419-10-OH:** Stéphane Dubuc (Applicant) v. Ministry of Community Safety and Correctional Services (Respondent) *(Withdrawn)*

**0217-11-OH:** Shawn Blair (Applicant) v. Scaffold-Russ Dilworth Ltd. (Respondent) *(Terminated)*

**0365-11-OH:** Shawn Eastwood (Applicant) v. Simcoe County District School Board and, Ontario Secondary School Teacher's Federation (Respondent) *(Withdrawn)*

**0567-11-OH:** Kelly Svendsen (Applicant) v. Atlas Rentals (Respondent) *(Terminated)*

**1078-11-OH:** Lance Richardson Deborah McCabe (Applicant) v. Homestead Land Holdings Ltd. (Respondent) *(Withdrawn)*

**1103-11-OH:** Wendi Rimmington (Applicant) v. Scott Evan (Touchstone on Lake Muskoka) (Respondent) *(Withdrawn)*

**1543-11-OH:** Brendan Garnier (Applicant) v. Wurth Canada (Respondent) *(Terminated)*

**1582-11-OH:** Wendylin McFarlane (Applicant) v. Distillery Market Inc. (Respondent) *(Granted)*

**1676-11-OH:** Wayne Cordingley (Applicant) v. Reliable Liftx Inc. (Respondent) *(Terminated)*

**1756-11-OH:** Charlena Metcalfe (Applicant) v. Crew Chief Conversions (Respondent) *(Withdrawn)*

**1832-11-OH:** Mohd Kabir Amiri (Applicant) v. Add Ink Atlantic Packaging Division (Respondent) *(Withdrawn)*

**2049-11-OH:** Geoffrey Cameron (Applicant) v. Stone's Auto Service Ltd (Respondent) *(Withdrawn)*

# CONSTRUCTION INDUSTRY GRIEVANCES

**0539-08-G:** Universal Worker's Union, L.I.U.N.A., Local 183 (Applicant) v. Al Power Lines 2000 Inc. (Respondent) *(Terminated)*

**3727-08-G:** Brick and Allied Craft Union of Canada, Local Union 25 (Applicant) v. ABP Constructors Ltd. (Respondent) *(Terminated)*

**0429-09-G:** Canadian Union of Skilled Workers (Applicant) v. Bruce Power LP (Respondent) *(Terminated)*

**1731-09-G:** International Union of Operating Engineers, Local 793 (Applicant) v. 906639 Ontario Inc. o/a Mike's Mobile Crane Service (Respondent) *(Terminated)*

**3571-09-G:** International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. T.P. Erection Company Ltd. (Respondent) *(Granted)*

**0408-10-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Cornwall Gravel Company Limited (Respondent) *(Withdrawn)*

**1628-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Capital Paving Inc. (Respondent) *(Terminated)*

**2191-10-G:** International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Safeguards Technology LLC (Respondent) *(Withdrawn)*

**3724-10-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Aecon Group Inc. and/or Aecon Construction and Materials Ltd. (Respondent) *(Withdrawn)*

**0062-11-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Locals 700 & 721 (Applicant) v. SOQQVVADRO Airectors Inc. (Respondent) *(Granted)*

**0435-11-G:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

**0440-11-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Arista Homes (Respondent) *(Withdrawn)*

**1237-11-G:** Universal Workers Union, L.I.U.N.A., Local 183 (Applicant) v. Pave-Tar Construction Ltd. (Respondent) *(Withdrawn)*

**1342-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Ciro Excavating & Grading Ltd. (Respondent) *(Endorsed Settlement)*

**1589-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Mammoet Canada (Eastern) Ltd. (Respondent) *(Terminated)*

**1671-11-G:** Brick and Allied Craft Union of Canada Brick and Allied Craft Union of Canada, Local 23 and International Union of Bricklayers and Allied Craftworkers, Local 23 (Applicant) v. RHI Canada Inc. (Respondent) *(Withdrawn)*

**1835-11-G:** Carpenters' District Council of Ontario, Local 2041 (Applicant) v. Technique Acoustique (L.R.) Inc. (Respondent) *(Granted)*

**1927-11-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Concreate USL (GP) Ltd. (Respondent) *(Withdrawn)*

**1965-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Merc Electrical Ltd. (Respondent) *(Granted)*

**2012-11-G:** United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Expertcom Construction Inc. (Respondent) *(Dismissed)*

**2022-11-G:** United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Haefen Inc./Chris R. Wilkins and Randy M. Pindur c.o.b. as Haefen Restorations (Respondent) *(Granted)*

**2027-11-G:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. 462409 Ontario Limited c.o.b. as Stradwick (North Bay) (Respondent) *(Granted)*

**2057-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. 1131042 Ontario Ltd. o/a Triple A Concrete & Drain (Respondent) *(Granted)*

**2058-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. 1131042 Ontario Ltd. o/a Triple A Concrete & Drain (Respondent) *(Granted)*

**2096-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Fortex Excavating Inc. (Respondent) *(Granted)*

**2103-11-G:** Labourers' International Union of North America, Local 625 (Applicant) v. The Network Group, A Division of 1522174 Ontario Ltd. (Respondent) *(Withdrawn)*

**2141-11-G:** The Formwork Council of Ontario and Labourers' International Union of North America, Local 1059 (Applicant) v. Co-Fo Concrete Forming Construction Ltd. (Respondent) *(Terminated)*

**2146-11-G:** The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. J & M Sandblasting & Painting (Respondent) *(Granted)*

**2159-11-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. ORBI Construction Group Inc. (Respondent) *(Granted)*

**2162-11-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Reliable Painters & Decorators, Ltd. (Respondent) *(Withdrawn)*

**2163-11-G:** The Form Work Council of Ontario and Labourers' International Union of North America, Local 1059 (Applicant) v. Tricar Developments Inc. (Respondent) *(Withdrawn)*

**2185-11-G:** Labourers' International Union of North America, Local 625 (Applicant) v. L. Mailloux Construction 2000 Inc. (Respondent) *(Granted)*

**2194-11-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. AMF All Metal Fabricating Ltd. (Respondent) *(Granted)*

**2195-11-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 & 736 (Applicant) v. GP Customs Inc. (Respondent) *(Granted)*

**2202-11-G:** Labourers' International Union of North America, Local 1059 Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Black & McDonald Limited (Respondent) *(Withdrawn)*

**2208-11-G:** International Brotherhood of Electrical Workers, Local 120 (Applicant) v. CDI Contracting Inc. (Respondent) *(Withdrawn)*

**2210-11-G; 2211-11-G; 2212-11-G:** International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping & Excavation Ltd. (Respondent) *(Granted)*

**2229-11-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Envirocon Abatements Ltd. (Respondent) *(Granted)*

**2242-11-G; 2243-11-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Marli Mechanical Ltd. (Respondent) *(Granted)*

**2258-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. L82 Construction Ltd. (Respondent) *(Terminated)*

**2310-11-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Miller Refrigeration & Air Conditioning (Respondent) *(Endorsed Settlement)*

**2313-11-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Long Valley Forming Limited (Respondent) *(Granted)*

**2314-11-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lancer Millwork & Project Management Inc. (Respondent) *(Granted)*

**2315-11-G:** The Carpenters' District Council of Ontario (Applicant) v. The Alcom Group Inc. (Respondent) *(Granted)*

**2317-11-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Metro Hoisting and Erecting Limited (Respondent) *(Granted)*

**2320-11-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Joe Da Silva c.o.b. JD Cold Rooms/Joe Da Silva c.o.b. JD Installations (An Unregistered Business Name) (Respondent) *(Granted)*

**2340-11-G:** The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Meteor Painters & Contractors (Canada) Ltd. (Respondent) *(Granted)*

**2349-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. J-AAR Excavating Ltd. (Respondent) *(Terminated)*

**2430-11-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. T.W. Johnstone Co. Ltd. (Respondent) *(Withdrawn)*

## APPEALS - EMPLOYMENT STANDARDS ACT

**2504-09-ES:** Ari Matikainen (Applicant) v. Nortrax Canada Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

**1555-10-ES:** Sheik M. Latiff (Applicant) v. Grenville Management Inc. o/a Inplex Facility Logistics and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1767-10-ES:** Theresa Levesque (Applicant) v. Trisan Realty Corporation and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1913-10-ES:** Joy E. McMahon (Applicant) v. Ed Furtado o/a Blackwater Coffee and Tea Co. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1999-10-ES:** 2128126 Ontario Inc. o/a Appearances Salon & Spa (Applicant) v. Erika T. Howe and, Director of Employment Standards (Respondent) *(Granted)*

**2338-10-ES:** Chris Hardie (Applicant) v. Partners Indemnity Insurance Brokers Ltd., Director of Employment Standards (Respondent) *(Withdrawn)*

**2417-10-ES:** Sandra May Buhler (Applicant) v. Loblaw Companies Limited/Les Compagnies Loblaw Limitee and, Director of Employment Standards (Respondent) *(Withdrawn)*

**2732-10-ES:** Jaime L. Hernandez (Applicant) v. Christos Magafas o/a C M Cleaning Services and, Director of Employment Standards (Respondent) *(Terminated)*

**2815-10-ES:** Heydary Hamilton PC (Applicant) v. Kai Yorke Edwards and, Director of Employment Standards (Respondent) *(Dismissed)*

**2831-10-ES:** Camis Inc. (Applicant) v. Shannon Sunega and, Director of Employment Standards (Respondent) *(Dismissed)*

**2953-10-ES:** Kenneth Efford, a director of Estate #32-158191 Tricom Technologies Inc. (Applicant) v. Ryan Danks, Charlie Huie, Andy Law, Shahram Maleki, Timothy Redford, Filip Rosco, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3017-10-ES:** Michelle Monpetit (Applicant) v. DB Ottawa Inc., c.o.b. as Direct Buy of Ottawa, and Director of Employment Standards (Respondent) *(Withdrawn)*

**3059-10-ES; 3060-10-ES; 3061-10-ES:** C-Living Inc. (Applicant) v. Hong Min Chen and, Director of Employment Standards (Respondent); C-Living Inc. (Applicant) v. Liang Cheng Jiang and, Director of Employment Standards (Respondent); C-Living Inc. (Applicant) v. Guo Lian Li and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3115-10-ES:** Munro Concrete Products Ltd. (Applicant) v. Michael (Jamie) Abbott and, Director of Employment Standards (Respondent) *(Dismissed)*

**3124-10-ES:** Timothy E. Quaife (Applicant) v. Vipond Inc. / Vipond Systems Group and, Director of Employment Standards (Respondent) *(Terminated)*

**3141-10-ES:** DMG Canada Inc. (Applicant) v. Neil Teague, Director Of Employment Standards (Respondent) *(Granted)*

**3146-10-ES:** Levert Personnel Resources Inc. (Applicant) v. Steven McNeil, and Director of Employment Standards (Respondent) *(Granted)*

**3271-10-ES:** Doxa Evaluations Corp. (Applicant) v. Sergio Mendez and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3401-10-ES:** 1168075 Ontario Limited operating as The Grand Nightclub (Applicant) v. Danny Zaldiner and, Director of Employment Standards (Respondent) *(Granted)*

**3438-10-ES:** Shawn Blair (Applicant) v. Scaffold-Russ Dilworth Limited, and Director of Employment Standards (Respondent) *(Terminated)*

**3536-10-ES:** Meridian Lightweight Technologies Inc. (Applicant) v. Mike Radan, and Director of Employment Standards (Respondent) *(Granted)*

**3726-10-ES:** Martin Pekarovic (Applicant) v. 1375710 Ontario Inc. and, Director of Employment Standards (Respondent) *(Granted)*

**3764-10-ES:** Sandra Kahu (Applicant) v. Walder & McSweeney Contracting Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

**3877-10-ES:** Brands International Corporation (Applicant) v. Davenand Sieupersad and, Director of Employment Standards (Respondent) *(Dismissed)*

**3989-10-ES:** Aleksandar Milovanovic (Applicant) v. Dieffenbacher North America Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4038-10-ES:** Dr. L. Kalman Dentistry Professional Corporation (Applicant) v. Estelle Richer and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4092-10-ES:** 2104882 Ontario Inc. operating as Diamond Grill (Applicant) v. Jenna Roussy and, Director of Employment Standards (Respondent) *(Dismissed)*

**4129-10-ES:** John Henry He (Applicant) v. Ryan Electric Inc. and, Director of Employment Standards (Respondent) *(Granted)*

**4205-10-ES; 4207-10-ES:** GTA Midways Inc. o/a GTA Midway (Applicant) v. Jason Bingleman, Director of Employment Standards (Respondent); GTA Midways Inc. o/a GTA Midway (Applicant) v. Christina MacKay and, Director of Employment Standards (Respondent) *(Granted)*

**4215-10-ES:** Donald Ray Nixon operating as Dr. Donald R. Nixon (Applicant) v. Leslie Maguire and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4295-10-ES:** Jyoti N. Jadav (Applicant) v. Champs Mentoring Champs and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4306-10-ES:** Frankfort Management Inc. operating as Bayden Build Renovate (Applicant) v. Amit Kulkarni and, Director of Employment Standards (Respondent) *(Withdrawn)*

**4321-10-ES:** Boardwalk Rental Communities (Applicant) v. Lawrence W. Parman and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4334-10-ES:** Lynn Keans-Wynia (Applicant) v. Sanpart Innisfil Beach Ltd. o/a Lakeside Retirement at Innisfil and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4342-10-ES:** Rebstock Inc. o/a Rebstocks (Applicant) v. Jordan Mitruk and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0007-11-ES:** Bock PPL Inc. (Applicant) v. Tyler Mitchell, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0026-11-ES:** Oxford College of Arts, Business and Technology Inc. (Applicant) v. Martin Isaacs and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0131-11-ES:** Joseph Johnson (Applicant) v. Automation Supply Inc., PTM Industries Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0323-11-ES:** Mary E Farrell (Applicant) v. 2175572 Ontario Inc. o/a Emerald Horizons Property Management, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0455-11-ES:** Maria Piperni and Mauro Piperni and 2229450 Ontario Ltd. operating as L.A. Music (Applicant) v. Kyle Ray and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0597-11-ES:** Michele Squadrilla, a Director of Alexandria Place Ltd. (Applicant) v. Claudio Futia and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0691-11-ES:** Peter K. J. Harris-McGregor (Applicant) v. Brian Eric Comeau o/a Kayden Construction and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0762-11-ES:** Redriven Power Inc. (Applicant) v. Paul Lowe, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0772-11-ES:** Kevin Cavanagh (Applicant) v. Scott Builders Inc. o/a Clarence H. Graham Design & Construction, Director of Employment Standards (Respondent) *(Terminated)*

**0792-11-ES:** William D. Watson (Applicant) v. Jenna Mayhew and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0807-11-ES:** Canadian National Institute for the Blind o/a CNIB (Applicant) v. Lou-Anne Desroches and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0822-11-ES:** 6756051 Canada Inc. (Applicant) v. Adam White and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0825-11-ES:** 1364593 Ontario Inc. o/a Pearl Auto Care (Applicant) v. Todd Hepburn and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0973-11-ES:** Vishal Jain (Applicant) v. Human Resource Capital Group Inc. Groupe Capital de Ressource Humaine Inc. o/a Spherion and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1002-11-ES:** Metrix Ready Mix Ltd. (Applicant) v. Santino Romano and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1031-11-ES:** 2069755 Ontario Inc. o/a Second Cup (Applicant) v. Giovanna Patovirta-Saffioti and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1036-11-ES:** Haiyan Xu, a director of Springfield Construction & Property Management Corp. (Applicant) v. Jerzy Oko, Marian Zukowski, Zdziskaw Ciura and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1089-11-ES:** 1502597 Ontario Inc. o/a Apple Auto Glass (Applicant) v. Scott Davis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1096-11-ES:** Trevor I. Langley (Applicant) v. Optima Communications International Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1190-11-ES:** 626658 Ontario Inc. o/a He & She Hairstyling (Applicant) v. Alayna Filion and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1203-11-ES:** B & I Truck Parts Inc 2194290 operating as B&I Truck Parts Inc. (Applicant) v. Mitchell Dempsey and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1205-11-ES:** Strabag Inc. (Applicant) v. Arianne M. Brunet and, Director of Employment Standards (Respondent) *(Granted)*

**1212-11-ES:** Benisasia Funeral Home Inc. (Applicant) v. Ravi Itwar and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1225-11-ES:** Zuchter Berk Creative Caterers Inc. (Applicant) v. Rosana Paulas and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1232-11-ES:** Manjit Singh Dhamrait (Applicant) v. Alpa Floor System Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1251-11-ES:** Farmbro Tech-Services Inc. (Applicant) v. Sondra Holmes-McPhee and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1257-11-ES:** Burger King Restaurants of Canada (Applicant) v. Terrance Shaw and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1260-11-ES; 1529-11-ES:** Mr. Gas Limited / Mr. Gas Limitee (Applicant) v. Brian Perron and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1264-11-ES:** 2202204 Ontario Inc. o/a Barley Mow Almonte, 1514674 Ontario Inc. o/a The Barley Mow Orleans, Windfall Pubs Limited o/a Barley Mow (The), 1470325 Ontario Inc. o/a Barley Mow Pub, and 1238619 Ontario Inc. (Applicant) v. Robert Picard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1267-11-ES:** Nada Bosnjakovic (Applicant) v. Hurley Corporation and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1282-11-ES:** David William Ross Anderson (Applicant) v. Centennial Windows Ltd. o/a Centennial Windows and Doors, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1285-11-ES:** 1829039 Ontario Inc. operating as Gourmet Burger Co. (Applicant) v. Jamie Henwood and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1307-11-ES:** Ayman Owiss (Applicant) v. St. Helen's Meat Packers Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1325-11-ES:** 1515084 Ontario Ltd. operating as Perfect Image (Applicant) v. Nicolas Bennett and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1361-11-ES:** 1230486 Ontario Inc. o/a Pizza Hut (Applicant) v. Lesa-Anne Murphy, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1399-11-ES:** Syed Abid Raza (Applicant) v. Gurcharan S. Syan Medicine Professional Corporation o/a GS Cardiac Lab Sudbury and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1421-11-ES:** M. Sullivan & Son Limited (Applicant) v. Adam Munro, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1433-11-ES:** Syed Asim Rafi, a director of 6793053 Can. Inc. o/a 750 Service Centre Oasis Point Inc. (Applicant) v. George Mallette and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1441-11-ES:** Wally World Bar & Grill Inc. operating as Wally World Bar and Grill (Applicant) v. Kathleen Turner and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1452-11-ES:** Centrestone Granite & Marble Inc. (Applicant) v. Wali Ghafori and, Director of Employment Standards (Respondent) *(Dismissed)*

**1486-11-ES:** South Simcoe Discovery Centres (Applicant) v. Lisa Claydon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1506-11-ES:** John M. Halliwell operating as Martin Halliwell (Applicant) v. Shirley Guillermo and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1511-11-ES; 1749-11-ES:** Mr. Gas Limited / Mr. Gas Limitee (Applicant) v. David Perron and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1515-11-ES:** Blanchfield Roofing Company Limited (Applicant) v. Linda Virgoe and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1517-11-ES:** Sarah Anderson (Applicant) v. eHealth Ontario and, Director of Employment Standards (Respondent) *(Terminated)*

**1539-11-ES:** Stewart Satellite T.V. Inc. (Applicant) v. Daniel Tardif and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1540-11-ES:** Peter J. Archambeault (Applicant) v. P.D. Mclaren Limited and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1547-11-ES:** Le Chateau Inc. (Applicant) v. Bianca Ramon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1578-11-ES:** Jackie Harris (Applicant) v. Robertson Human Asset Management Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1613-11-ES:** Lawrenzo Foods Ltd. operating as McDonald's Restaurant (Applicant) v. Michele Wade and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1659-11-ES:** Costco Wholesale Canada Ltd. (Applicant) v. Susan Marion and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1664-11-ES; 1665-11-ES; 1667-11-ES; 1668-11-ES:** Sharon Coutu and Jean Coutu operating as Mortgage Marketing and MM Mortgage Marketing Inc. (Applicant) v. Starlynn Bourque and, Director of Employment Standards (Respondent); Sharon Coutu and Jean Coutu operating as Mortgage Marketing and MM Mortgage Marketing Inc. (Applicant) v. Katreena Lepage and, Director of Employment Standards (Respondent); Sharon Coutu and Jean Coutu operating as Mortgage Marketing and MM Mortgage Marketing Inc. (Applicant) v. Jonathan Lavoie and, Director of Employment Standards (Respondent); Sharon Coutu and Jean Coutu operating as Mortgage Marketing and MM Mortgage Marketing Inc. (Applicant) v. Vanessa Jolicoeur and, Director of Employment Standards (Respondent); Sharon Coutu and Jean Coutu operating as Mortgage Marketing and MM Mortgage Marketing Inc. (Applicant) v. Devon Mongeon and, Director of Employment Standards (Respondent) *(Dismissed)*

**1682-11-ES:** Alfred K. Soosaipillai (Applicant) v. 1809287 Ontario Limited o/a Cherry Street Restaurant and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1708-11-ES:** Rosalee Frederick (Applicant) v. IQT, Ltd. Durham Contact Centre Limited 2010123 Ontario Inc., Director of Employment Standards (Respondent) *(Withdrawn)*

**1709-11-ES:** National Energy Corporation (Applicant) v. Jesse Bergant and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1717-11-ES:** Surekha Medhora (Applicant) v. Indranee Mugon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1734-11-ES; 1735-11-ES:** Marshall Eco Smart Solutions Inc. (Applicant) v. Luc Peters and, Director of Employment Standards (Respondent); Marshall Eco Smart Solutions Inc. (Applicant) v. Stephanie Costa and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1799-11-ES:** United Cleaning Services Ltd. (Applicant) v. Steve Rattray and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1800-11-ES:** Jesse Bergant (Applicant) v. National Energy Corporation and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1834-11-ES:** Tabytha Lois International Ltd. o/a Avec Plaisir, Fine Lingerie (Applicant) v. Maria A. Kostadinova and, Director of Employment Standards (Respondent) *(Terminated)*

**1855-11-ES:** Dixon Commercial Investigators (1982) Inc. (Applicant) v. Robert B. Stepien and, Director of Employment Standards (Respondent) *(Dismissed)*

**1865-11-ES:** Barbara Smart (Applicant) v. Arthur D. Fleming Professional Corporation and, Director of Employment Standards (Respondent) *(Terminated)*

**1928-11-ES:** Minteriors Cleaning Services Inc. (Applicant) v. Ann Marie Campbell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1933-11-ES:** 3499481 Canada Inc. o/a PJ's Pet Centres (Applicant) v. Celina E. Larouchelle and, Director of Employment Standards (Respondent) *(Terminated)*

**1935-11-ES:** JF Automation Inc. o/a JF Automation (Applicant) v. Jennifer Desousa and, Director of Employment Standards (Respondent) *(Terminated)*

**2003-11-ES; 2004-11-ES:** 2142130 Ontario Inc. operating as Borealis Grille & Bar (Applicant) v. Rachel Stryker and, Director of Employment Standards (Respondent); 2142130 Ontario Inc. operating as Borealis Grille & Bar (Applicant) v. Jeff Taylor and, Director of Employment Standards (Respondent) *(Dismissed)*

**2013-11-ES:** Integrity Roofing Ltd. (Applicant) v. Adam Gaviller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2040-11-ES:** Allan Roger Clark and Debra Ann Hiley o/a Meta-Morph-Us Fashions (Applicant) v. Krista Moore and, Director of Employment Standards (Respondent) *(Terminated)*

**2043-11-ES:** 1349425 Ontario Ltd. operating as Venice Fitness (Applicant) v. Gary R. Everatt and, Director of Employment Standards (Respondent) *(Terminated)*

**2088-11-ES:** Canadian Bio Pellet Inc. (Applicant) v. Chris Maycock and, Director of Employment Standards (Respondent) *(Terminated)*

**2114-11-ES:** Allen Shully, a director of First Waste Transload Inc. (Applicant) v. Jose G. Augusto,, Patricia Riethmueller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2144-11-ES:** 2219124 Ontario Inc. o/a Black Moon Bar and Lounge (Applicant) v. Veronika Radolovich and, Director of Employment Standards (Respondent) *(Terminated)*

**2286-11-ES:** Thomas Bruce Milne (Applicant) v. Internet Archive Canada and, Director of Employment Standards (Respondent) *(Withdrawn)*

**2292-11-ES:** Sandwich Box Inc. (Applicant) v. Anastasija Mihejeva and, Director of Employment Standards (Respondent) *(Dismissed)*

**2300-11-ES:** Linda Wilson (Applicant) v. Pine Ridge Specialty Wood Products Inc. and Canada Pallet Corp. and, Director of Employment Standards (Respondent) *(Terminated)*

**2351-11-ES:** Charlie Strutton (Applicant) v. Pine Ridge Specialty Wood Products Inc. and Canada Pallet Corp. and, Director of Employment Standards (Respondent) *(Terminated)*

**2398-11-ES:** Leszek Zerek (Applicant) v. UAP Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

## APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

**0179-10-HS:** Kellogg Canada Inc. (Applicant) v. The Bakery, Confectionary, Tobacco Workers and Grain Millers Local 154-G, Christopher Callaghan, Inspector (Respondent) *(Withdrawn)*

**0639-11-HS:** Ottawa-Carleton Public Employees Union, Local 503 (Applicant) v. The City of Ottawa and, Laurie Nicholson - Inspector (Respondent) *(Withdrawn)*

**0826-11-HS; 1678-11-HS:** Dollarama L.P. (Applicant) v. Donna Zaba and, Karen Lindsay, Inspector (Respondent); Dollarama L.P. (Applicant) v. Karen Webster and, Chris Feddema, Inspector (Respondent) *(Withdrawn)*

**1787-11-HS:** Kevin Kelly (Applicant) v. Connectall Communications Ltd and, Gregory Rock, Inspector (Respondent) *(Withdrawn)*

**1934-11-HS:** USW Local 6500 (Applicant) v. Vale Canada Ltd., Shaun Carter, Inspector (Respondent) *(Withdrawn)*

## REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

**1776-11-M:** Grand River Valley Health Care Employees Union Local 305 affiliated with the Christian Labour Association of Canada (Applicant) v. Marsdale Manor Limited c.o.b. As Marsdale Manor (Respondent) *(Granted)*

## CECBA - ESSENTIAL SERVICES (SEC. 36.1)

**1955-11-M:** Amalgamated Transit Union, Local 1587 (Applicant) v. Metrolinx (Respondent) *(Granted)*

## PAY EQUITY ACT

**0226-11-PE:** Canadian Union of Public Employees Local 896 (Applicant) v. Au Chateau Home For Aged (Respondent) *(Terminated)*

**1594-11-PE:** Contact Creative Services Inc. (Applicant) v. Steve Long, Tracy Toniolo, Kelly Errington, Carolyn Harrison, Mary Lyle, Hanna Ibson, Connie Anderson, Marnie Nogueira, Marjorie Stoner (Respondent) *(Withdrawn)*

## PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

**3305-09-PS:** Ontario Nurses' Association (Applicant) v. Windsor Regional Hospital, Reveral Living, Central Park Lodge (Respondent) v. Canadian Union of Public Employees and its Local 1132, National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 2458, Ontario Public Service Employees Union (Intervener) *(Withdrawn)*

**1442-11-PS:** Ontario Public Service Employees Union (Applicant) v. Lanark, Leeds & Grenville Children's Aid Society, Children's Aid Society of Brockville and the United Counties of Leeds & Grenville,, The Children's Aid Society of the County of Lanark and the Town Smiths Falls and, Canadian Union of Public Employees, Local 2577 (Respondent) *(Dismissed)*

Unit: "all full-time, part-time and casual employees of Family and Children's Services of Lanark, Leeds and Grenville, save and except Supervisors/Service Managers, persons above the rank of Supervisor/Service Manager, and Executive Assistant(s) to Senior Management, finance/human resources assistant, finance/information assistant, project manager, planning coordinator, human resources assistants, summer students, youth representatives/children in care and any member of the legal profession entitled to practice in Ontario and employed in a professional capacity" (employees in unit)

## PUBLIC SERVICE OF ONTARIO ACT, 2006

**3737-09-M:** Brent Lauber (Applicant) v. Ontario Clean Water Agency (Respondent) *(Withdrawn)*

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**0883-08-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. A B & C Renovations Inc. (Respondent) *(Dismissed)*

**2298-08-U:** Sheet Metal Workers' International Association, Local 51 Roofing and Siding Members of Carpenters Local 27 Listed on Schedule "A" Attached (Applicant) v. Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) v. 413554 Ontario Limited c.o.b. as Chouinard Bros. Roofing (Intervener) *(Dismissed)*

**2822-08-U:** Brenda Ross (Applicant) v. Ontario Public Service Employee's Union (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Municipal Affairs and Housing (Intervener) *(Dismissed)*

**0831-09-U:** 413554 Ontario Limited c.o.b. as Chouinard Bros. Roofing (Applicant) v. Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America, Trudel and Sons Roofing Ltd., Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Burnhamthorpe Roofing Co. Ltd. (1994), Jackson Roofing GTA Inc. (Intervener) *(Dismissed)*

**1237-09-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Westendorp Demolition and, John Westendorp Enterprises Inc. (Respondent) *(Dismissed)*

**2702-09-R:** Sheet Metal Workers' International Association, Local 269 (Applicant) v. Precision Sheet Metal Inc., 995451 Ontario Inc. c.o.b. as Quality Mechanical and, 1382667 Ontario Limited c.o.b. as G & R Mechanical Insulation (Respondent) *(Dismissed)*

**2205-10-JD:** Labourers' International Union of North America, Local 506 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 27, Board of Governors of Exhibition Place (Respondent) *(Dismissed)*

**2711-10-U:** Bruce Power LP (Applicant) v. The Society of Energy Professionals (Respondent) (Disposition not Available)

**0707-11-ES:** 2216456 Ontario Inc. o/a The Big Smoke Barbecue (Applicant) v. Adrian Bell and, Director of Employment Standards (Respondent) *(Dismissed)*

**1284-11-ES:** Globest Immigration Inc. (Applicant) v. Zeinab Roosta and, Director of Employment Standards (Respondent) *(Dismissed)*

**1545-11-ES:** Skylar Lee o/a Lee General Contracting (Applicant) v. Jason Brown and, Director of Employment Standards (Respondent) *(Dismissed)*

**2056-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. 2191434 Ontario Inc. o/a Elgin Construction (Respondent) *(Dismissed)*

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 2011

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**0930-10-R:** United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. VanderWal Homes & Commercial Group (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of VanderWal Homes & Commercial Group in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of VanderWal Homes & Commercial Group in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

**1397-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. E.T. Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of E.T. Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of E.T. Construction Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**2042-10-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Direct Traffic Management Inc. (Respondent)

Unit: "all construction labourers in the employ of Direct Traffic Management Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2076-10-R:** International Union of Painters and Allied Trades, Local 114 (Applicant) v. EllisDon Corporation (Respondent)

Unit: "all painters and painters' apprentices in the employ of EllisDon Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of EllisDon Corporation in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**3049-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Network Site Services Ltd., N.S.S. Holdings Inc. (Respondent)

Unit: "all construction labourers in the employ of Network Site Services Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

**4318-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 923606 Ontario Inc. o/a Amy-Co Contracting (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 923606 Ontario Inc. o/a Amy- Co Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 923606 Ontario Inc. o/a Amy-Co Contracting in all sectors of the construction industry within a radius of 33 kilometers (approximately 20 miles) of the North Bay post office, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1145-11-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1433310 Ontario Ltd. o/a Karim Homes (Respondent)

Unit: "all painters and painters' apprentices in the employ of 1433310 Ontario Ltd. o/a Karim Homes in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of 1433310 Ontario Ltd. o/a Karim Homes in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**2180-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Starward Homes Management Limited (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Starward Homes Management Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Starward Homes Management Limited in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**2220-11-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Yirka Contracting (2006) Ltd. (Respondent)

Unit: "all construction labourers, all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, and all teamsters engaged in on-site construction, in the employ of the Yirka Contracting (2006) Ltd. in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (8 employees in unit)

**2450-11-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 777182 Ontario Inc. o/a Western Drywall (Respondent)

Unit: "of all painters and painters' apprentices in the employ of 777182 Ontario Inc. o/a Western Drywall in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and of all painters and painters' apprentices in the employ of 777182 Ontario Inc. o/a Western Drywall in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

**2471-11-R:** Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. Bassi Construction Ltd. (Respondent)

Unit: "all plasterers and plasterers' apprentices, spray fibre applicators, drywall tapers and rigid insulation applicators in the employ of Bassi Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and plasterers and plasterers' apprentices, spray fibre applicators, drywall tapers and rigid insulation applicators in the employ of Bassi Construction Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**2519-11-R:** Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Landmart Building Corp. and, Landmart Homes (Respondent)

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of Landmark Building Corp and Landmark Homes in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**2592-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bond Paving & Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Bond Paving & Construction Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham. the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

## Bargaining Agents Certified Subsequent to Vote

**2474-09-R:** Canadian Union of Public Employees (Applicant) v. Toronto Transit Commission (Respondent)

Unit: "all special constables employed by the Toronto Transit Commission in the City of Toronto, save and except special constables employed in Investigative Services (Special Investigations Unit and Criminal Investigation Unit) supervisors and persons above the rank of supervisor and the System Security Unit and, pending the resolution of their status, excluding as well sergeants" (85 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 102 |
| Number of persons who cast ballots | 81 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 69 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 12 |

| | |
|---|---|
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 55 |
| Number of ballots marked against applicant | 14 |
| Number of ballots segregated and not counted | 12 |

**1970-10-R:** Power Workers' Union, CUPE Local 1000 - C.L.C. (Applicant) v. Compass Group Canada Ltd. (Respondent)

Unit: "all employees of Compass Group Canada Ltd. employed at the Bruce Nuclear Power Development in the municipality of Kincardine, Ontario, save and except Food Service Director, Production Manager, Unit Manager, Assistant Unit Manager and persons above the rank of Assistant Unit Manager." (29 employees in unit)

**1874-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Breadko National Bakery Ltd. (Respondent)

Unit: "all employees of Breadko National Bakery Ltd., in the City of Mississauga, Ontario, save and except Supervisors and persons above the rank of Supervisor, Drivers, Receiver, Quality Control, Office and Clerical Staff and Sales Representatives" (65 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 46 |
| Number of persons who cast ballots | 110 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 39 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 65 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 52 |
| Number of ballots marked against applicant | 33 |
| Number of ballots segregated and not counted | 24 |

**2215-11-R:** Canadian Union of Public Employees (Applicant) v. The Board of Governors of Exhibition Place (Respondent)

Unit: "all employees employed as Security Officers by The Board of Governors of Exhibition Place at 200 Princes' Blvd. in Toronto, save and except supervisors, persons above the rank of supervisor, and persons already represented by a Trade Union" (33 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 31 |
| Number of persons who cast ballots | 31 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 25 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 28 |
| Number of ballots marked against applicant | 3 |
| Number of ballots segregated and not counted | 0 |

**2293-11-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. European Quality Meats and Sausages (Respondent)

Unit: "all employees of European Quality Meats & Sausages employed at 16 Jutland Road, Toronto, Ontario, save and except Supervisors, persons above the rank of supervisor, office, clerical, quality assurance and sales staff" (53 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 51 |
| Number of persons who cast ballots | 50 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 42 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 7 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 25 |
| Number of ballots marked against applicant | 18 |
| Number of ballots segregated and not counted | 7 |

**2446-11-R:** Christian Labour Association of Canada (Applicant) v. Moulure Alexandria Moulding Inc., owned and operated by Alexandria Sash & Door Company Limited (Respondent) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Intervener)

Unit: "all employees of Moulure Alexandria Moulding Inc. owned and operated by Alexandria Sash and Door Company Limited employed at Alexandria, Ontario and at Lochiel, Ontario, save and except foremen, supervisors, those above the rank of foremen and supervisors, office staff and persons regularly employed for not more than twenty-four (24) hours per week tous les employés de Moulure Alexandria Moulding Inc. détenu et exploité par Alexandria Sash and Door Company Limited, employés à Alexandria (Ontario) et à Lochiel (Ontario), à l'exception des contremaîtres et superviseurs, des personnes occupant un poste de rang supérieur à celui de contremaître ou de superviseur, du personnel de bureau et des personnes régulièrement employees pendant 24 heures au plus par semaine" (250 employees in unit) *(Having regard to the agreement of the parties.)*

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|---|---|
| Number of names of persons on revised voters' list | 263 |
| Number of persons who cast ballots | 247 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 225 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 12 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 3 |
| Number of ballots marked in favour of applicant | 163 |
| Number of ballots marked against applicant | 81 |
| Number of ballots segregated and not counted | 0 |

**2452-11-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Alternatives, The East York Mental Health Counselling Services Agency (Respondent)

Unit: "all employees of Alternatives, The East York Mental Health Counselling Service Agency employed in the City of Toronto, save and except persons who exercise managerial functions within the meaning of the Labour Relations Act or who are employed in a confidential capacity in matters relating to labour relations within the meaning of the Labour Relations Act" (7 employees in unit) *(Having regard to the agreement of the parties.)*

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|---|---|
| Number of names of persons on revised voters' list | 8 |
| Number of persons who cast ballots | 6 |

| | |
|---|---|
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked against applicant | 1 |
| Number of ballots segregated and not counted | 0 |

**2478-11-R:** National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. UTIL Canada Limited (Respondent)

Unit: "all employees of UTIL Canada Limited in the city of Vaughan, save and except supervisors, persons above the rank of supervisor, quality assurance staff, office, clerical and sales staff" (215 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 218 |
| Number of persons who cast ballots | 224 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 208 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 15 |
| Number of spoiled ballots | 1 |
| Number of ballots marked in favour of applicant | 147 |
| Number of ballots marked against applicant | 60 |
| Number of ballots segregated and not counted | 16 |

**2578-11-R:** Ontario Nurses' Association (Applicant) v. Diversicare Canada Management Services Co., Inc. c.o.b. as Tilbury Manor Nursing Home (Respondent)

Unit: "all registered nurses and nurses with a temporary certificate of registration employed at Tilbury Manor Nursing Home, located in the Municipality of Chatham-Kent, save and except managers, persons above the rank of manager, the Director of Resident Care, the Administrator if appropriate and persons covered by a subsisting collective agreement" (7 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 7 |
| Number of persons who cast ballots | 5 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 5 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

**2587-11-R:** Service Employees International Union Local 1 Canada (Applicant) v. Oakdale Child and Family Services Inc. (Respondent)

Unit: "all employees of Oakdale Child and Family Services Inc. in the City of Toronto save and except supervisors, persons above the rank of supervisor and office and clerical employees" (40 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 40 |
| Number of persons who cast ballots | 36 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 33 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 2 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 28 |
| Number of ballots marked against applicant | 5 |
| Number of ballots segregated and not counted | 3 |

**2603-11-R:** Ontario Taxi Workers Union (Applicant) v. 1645156 Ontario Ltd. operating as Markham and Avenue Taxi and Limousine Service (Respondent)

Unit: "all employees of 1645156 Ontario Ltd., o/a Markham and Avenue Taxi and Limousine Service, operating as owners and/or drivers of taxi cabs licensed to operate in the Town of Markham and/or the Town of Richmond Hill save and except supervisors, dispatchers, multi-car/multi-plate owners or lessees, persons above the rank of dispatcher, office and clerical staff" (107 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 107 |
| Number of persons who cast ballots | 95 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 94 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 74 |
| Number of ballots marked against applicant | 21 |
| Number of ballots segregated and not counted | 0 |

**2672-11-R:** Canadian General Workers Union (Applicant) v. Vantage Foods (ON) Inc. (Respondent)

Unit: "all employees of Vantage Foods (ON) Inc. in the City of Belleville, save and except supervisors, those above the rank of supervisor, office, clerical and administrative staff, quality assurance staff and technicians, and those excluded by the Act" (17 employees in unit) *(Having regard to the agreement of the parties.)*

| | |
|---|---|
| Number of names of persons on revised voters' list | 17 |
| Number of persons who cast ballots | 19 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 19 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |

| | |
|---|---|
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 19 |
| Number of ballots marked against applicant | 0 |
| Number of ballots segregated and not counted | 0 |

## Applications for Certification Dismissed Without Vote

**0124-Y7-R:** United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Ottawa Business Interiors Ltd. (Respondent)

**1129-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Nipissing First Nation (Respondent) v. Union of Ontario Indians (Intervener)

**1828-10-R:** Labourers' International Union of North America, Local 625 (Applicant) v. Alpine Construction (Windsor) Inc. (Respondent)

**2670-11-R:** Ontario Workers' Union (Applicant) v. Steri-Pro Canada LP: division of (Steri-Pro Canada Inc.) (Respondent) v. Service Employees International Union Local 1 Canada (Intervener)

## Applications for Certification Dismissed Subsequent to Vote

**1836-10-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 444 (Applicant) v. Great Blue Heron Gaming Company (Respondent)

Unit : "all security officers of the Great Blue Heron Gaming Company c.o.b. as the Great Blue Heron Charity Casino located in the lands of the Mississaugas of Scugog Island First Nation, save and except Supervisors, persons above the rank of Supervisors, Surveillance and Security Training Officers, Team Leaders, Office, Clerical and employees covered by an existing collective agreement." (62 employees in unit)

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|---|---|
| Number of names of persons on revised voters' list | 63 |
| Number of persons who cast ballots | 61 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 61 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 34 |
| Number of ballots marked against applicant | 27 |
| Number of ballots segregated and not counted | 0 |

**1759-11-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital Full-Time Clerical (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all office and clerical employees of Humber River Regional Hospital in Metropolitan Toronto, Ontario save and except Supervisors, persons above the rank of Supervisor, Secretaries to: the Executive Director, Associate Executive Director, director of Nursing, Director of Personnel, Medical Staff committee, Director of Finance, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period" (194 employees in unit)

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|---|---|
| Number of names of persons on revised voters' list | 192 |
| Number of persons who cast ballots | 143 |

| | |
|---|---|
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 143 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of applicant | 61 |
| Number of ballots marked in favour of intervener | 82 |
| Number of ballots segregated and not counted | 0 |

### Applications for Certification Withdrawn

**3969-09-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. M.G.R. Contracting and Maintenance Ltd. (Respondent)

**0772-10-R:** Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. V.I.E.W. Systems Inc. (Respondent)

**1271-11-R:** The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 822 (Applicant) v. Ed Mirvish Enterprises Limited (Respondent)

**1465-11-R**: Canadian Construction Workers Union (Applicant) v. Allegra Homes and, Allegra Icon Homes and, Allegra Construction Inc. and, Allegra Homes (Milton) Inc. and, Allegra Homes in Milton Inc. and, Allegra Homes Sheppard Inc. (Respondent) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Intervener)

**2054-11-R:** Sheet Metal Workers' International Association (Applicant) v. Montgomery's Comfort Centre / Montgomery Mechanical Contractors (Respondent) v. Canadian Union of Skilled Workers (Intervener)

**2504-11-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. A.P. Plasman - Windsor Plant #1 (Respondent)

**2609-11-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Asbury Building Services Inc. (Respondent)

**2805-11-R:** Labourers' International Union Of North America, Ontario Provincial District Council (Applicant) v. A-1 Asphalt Maintenance Ltd. (Respondent)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**3351-09-R:** Carpenters District Council of Ontario, Local 1946 (Applicant) v. Hi Tek Dev Inc. and, Abcon Drywall & Acquistic (Respondent) *(Terminated)*

**3725-09-R**: United Food and Commercial Workers Canada Union, Local 1000A (Applicant) v. Cambridge Fine Foods Ltd. and, Soya World Inc. (Respondent) *(Withdrawn)*

**3748-09-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Marj Drain & Concrete Ltd. and, J.V. Concrete & Drains Ltd. (Respondent) *(Granted)*

**0052-11-R:** Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. RONA Inc. and, 4361814 Canada Inc. (as opposed to 4361814 Canada Inc. carrying on business as Noble Don Park Limited Partnership), Don Park Limited Partnership (Respondent) *(Granted)*

**0276-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2183052 Ontario Corp., B-Style Concrete Group Corp. and, Abco One Corporation (Respondent) *(Withdrawn)*

**0372-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wasaga Trim Supply (2006) Inc. and, 2251271 Ontario Limited (Respondent) *(Endorsed Settlement)*

**0608-11-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 853 - Sprinkler Fitters of Ontario (Applicant) v. RONA Inc. and, 4361814 Canada Inc. (as opposed to 4361814 Canada Inc. carrying on business as Noble Don Park Limited Partnership), Don Park Limited Partnership (Respondent) *(Granted)*

**0635-11-R:** Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America Local 183 Masonry Council of Unions Toronto and Vacinity (Applicant) v. Sunpark Masonry Inc., Parkview Masonry Ltd., Sanpak Inc., Joao Paulo Da Costa Correia o/a Sanpak Inc. (Respondent) *(Granted)*

**2305-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. D.D.R. Landscape Contracting Ltd. and, Tannenbaum Landscape & Design Inc. (Respondent) *(Granted)*

**2342-11-R:** Sheet Metal Workers' International Association, Local Union No. 30 (Applicant) v. RONA Inc. and, 4361814 Canada Inc. carrying on business as Noble Don Park Limited Partnership (Respondent) *(Granted)*

## SALE OF A BUSINESS

**1566-09-R; 1567-09-R:** The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The District School Board Ontario North East and, The Foleyet District School Area Board (Respondent) *(Withdrawn)*

**3351-09-R:** Carpenters District Council of Ontario, Local 1946 (Applicant) v. Hi Tek Dev Inc. and, Abcon Drywall & Acquistic (Respondent) *(Terminated)*

**3725-09-R:** United Food and Commercial Workers Canada Union, Local 1000A (Applicant) v. Cambridge Fine Foods Ltd. and, Soya World Inc. (Respondent) *(Withdrawn)*

**3748-09-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Marj Drain & Concrete Ltd. and, J.V. Concrete & Drains Ltd. (Respondent) *(Granted)*

**0052-11-R:** Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. RONA Inc. and, 4361814 Canada Inc. (as opposed to 4361814 Canada Inc. carrying on business as Noble Don Park Limited Partnership), Don Park Limited Partnership (Respondent) *(Granted)*

**0276-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2183052 Ontario Corp., B-Style Concrete Group Corp. and, Abco One Corporation (Respondent) *(Withdrawn)*

**0372-11-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wasaga Trim Supply (2006) Inc. and, 2251271 Ontario Limited (Respondent) *(Endorsed Settlement)*

**0608-11-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 853 - Sprinkler Fitters of Ontario (Applicant) v. RONA Inc. and, 4361814 Canada Inc. (as opposed to 4361814 Canada Inc. carrying on business as Noble Don Park Limited Partnership), Don Park Limited Partnership (Respondent) *(Granted)*

**0635-11-R:** Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America Local 183 Masonry Council of Unions Toronto and Vacinity (Applicant) v. Sunpark Masonry Inc., Parkview Masonry Ltd., Sanpak Inc., Joao Paulo Da Costa Correia o/a Sanpak Inc. (Respondent) *(Granted)*

**2305-11-R:** International Union of Operating Engineers, Local 793 (Applicant) v. D.D.R. Landscape Contracting Ltd. and, Tannenbaum Landscape & Design Inc. (Respondent) *(Granted)*

**2342-11-R**: Sheet Metal Workers' International Association, Local Union No. 30 (Applicant) v. RONA Inc. and, 4361814 Canada Inc. carrying on business as Noble Don Park Limited Partnership (Respondent) *(Granted)*

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0326-10-R:** Yvan Cote (Applicant) v. The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Bermingham Construction Limited (Intervener) *(Granted)*

Unit: "all journeymen and apprentice carpenters, other than millwrights, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom the Union has bargaining rights." (1 employee in unit)

**0381-10-R:** Isaac Dyck, Robert Gilbert, Jordan Kuzub, Mark Patterson, James Spence, Dwayne VanEgmond, Jeff Mullin and Stephen Virag (Applicant) v. Sheet Metal Workers' International Association, Local 51 (Respondent) v. Trudel & Sons Roofing Ltd., United Brotherhood of Carpenters and Joiners of America, Local 27 (Intervener) *(Terminated)*

Unit: "all employees (workers) of Trudel & Sons Roofing Ltd. who perform the work described in the clarity note below, as well as the metalmen who perform the work described in the clarity mote below, excluding non-working foremen, hourly service men, flat roofers, aluminum/vinyl applicators, persons engaged in re-roofing, office, warehouse/shop workers, clerical workers and persons above the rank of foreman, engaged in the application of shingles and other roofing materials in new subdivision work (three or more units) in residential low-rise buildings (defined as non-elevated housing of not more than four (4) stories in height excluding basement) in the Province of Ontario, save and except the industrial, commercial and institutional sector. For additional clarity custom homes are excluded. *Clarity Note:* The word Worker(s) shall mean those persons who install asphalt shingles, louvers (roof vents), eave protection (including drip edge), step flashing, dormer flashing (under siding outside of O.L.R.B. Board Area 8 only), valleys (metal or asphalt) and ice and water shield corner pans (shinglers) or who apply counter-flashing, dormer flashing, skylights, chimney pans and bay windows (metalmen) who are remunerated on a piecework basis." (130 employees in unit)

**2259-10-R:** Bradley Vandermaarel, Richard De Haan, Justin Hannaford and, Philip Skinner (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Respondent) v. Schuit Plastering & Stucco Inc. or Gerald Schuit Plastering & Stucco Inc. (Intervener) *(Withdrawn)*

Unit: "all construction labourers, carpenters, carpenters' apprentices, painters and painters' apprentices in the employ of Schuit Plastering & Stucco Inc. or Gerald Schuit Plastering and Stucco Inc. in all sectors of the constructions industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville, and Halton Hills and that portion of the Town of Hilton within the geographical Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foreman and persons above the rank of non-working foreman." (6 employees in unit)

**1913-11-R:** I. Pearce & employees of Brad Cole Underground Construction Limited (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council (Respondent) v. Brad Cole Underground Construction Limited (Intervener) *(Dismissed)*

Unit: "all construction labourers in the employ of Brad Cole Underground Construction Limited in all sectors of the construction industry in the Counties of Essex and Kent and the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in unit)

**2262-11-R:** Maneshwar Ramgolam & a Group of Employees of Iron Mountain, Toronto (Applicant) v. United Steelworkers of America (Respondent) v. Iron Mountain Canada Corporation (Intervener) *(Dismissed)*

Unit: "all employees of Iron Mountain Canada Corporation working in and out of the City of Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical, sales marketing and billing employees." (75 employees in unit)

**2382-11-R:** John Wanjiru and Mahmood Shah and Sheila Armstrong and Sherina Saleh (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) v. Benlan Inc. (Intervener) *(Granted)*

Unit: "all employees of Benlan Inc. in its manufacturing facility located at 2760 Brighton Road in the city of Oakville, save and except assistant supervisors and supervisors, persons above the rank of assistant supervisors and supervisors, quality control, truck drivers, office and sales staff" (202 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 202 |
| Number of persons who cast ballots | 185 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 184 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 2 |
| Number of ballots marked in favour of respondent | 89 |
| Number of ballots marked against respondent | 93 |
| Number of ballots segregated and not counted | 1 |

**2506-11-R:** Larissa Fan (Applicant) v. National Association of Broadcast Employees and Technicians, Local 700, Communications, Energy and Paperworkers Union of Canada (hereinafter referred to as NABET 700 CEP) (Respondent) *(Granted)*

**2544-11-R:** Hampton Terrace Care Centre (Applicant) v. Ontario Nurses Association (Respondent) v. Hampton Terrace Care Centre (Intervener) *(Terminated)*

**2614-11-R:** Ms. Trina Richer (Applicant) v. Retail, Wholesale and Department Store Union, District Council-of the United Food and Commercial Workers International Union (Respondent) v. Uptown Cleaners Limited cob Sudbury Steam Laundry (Intervener) *(Granted)*

Unit: "all employees of the Company operating as Sudbury Steam Laundry or any combination of the name Sudbury Laundry and Dry Cleaners Limited or any depot opened or operated as a combination of Uptown Cleaners Ltd. and or Sudbury Steam Laundry and Sudbury Laundry and Dry Cleaners in the City of Greater Sudbury save and except supervisors and persons above the rank of supervisors, sales, office and clerical staff and employees working at the present and future Uptown Cleaners Depots currently located at: 1. 8 Lisgar Street 2. 759 Barrydown Road 3. 1610 Regent Street 4. 772 Lasalle Blvd. 5.1769 Regent Street" (18 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 18 |
| Number of persons who cast ballots | 15 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 14 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 1 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 1 |
| Number of ballots marked against respondent | 13 |
| Number of ballots segregated and not counted | 1 |

**2628-11-R:** Hampton Terrace Care Centre (Applicant) v. Ontario Nurses Association (Respondent) *(Dismissed)*

**2680-11-R:** Rose Pong (Applicant) v. Ontario Nurses' Association (Respondent) v. Hampton Terrace Care Centre (Intervener) *(Granted)*

Unit: "all registered nurses and nurses with a temporary certificate of registration employed in a nursing capacity by the Hampton Terrace Care Centre located in the City of Burlington, save and except managers, persons above the rank of manager, and persons covered by a subsisting collective agreement" (9 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 9 |
| Number of persons who cast ballots | 7 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 1 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 0 |
| Number of ballots marked against respondent | 6 |
| Number of ballots segregated and not counted | 1 |

**2707-11-R:** Kim Kovacs (Applicant) v. Canadian Office and Professional Employees, Local 343 (Respondent) v. McMaster Savings and Credit Union Limited (Intervener) *(Granted)*

Unit: "all employees of the McMaster Savings and Credit Union Limited in the City of Hamilton, save and except Data & Accounting, Supervisor/Executive Secretary, Branch Managers and persons above the rank of Branch Manager." (7 employees in unit)

| | |
|---|---|
| Number of names of persons on revised voters' list | 9 |
| Number of persons who cast ballots | 6 |
| Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list | 6 |
| Number of segregated ballots cast by persons whose names appear on voter's list | 0 |
| Number of segregated ballots cast by persons whose names do not appear on voters' list | 0 |
| Number of spoiled ballots | 0 |
| Number of ballots marked in favour of respondent | 2 |
| Number of ballots marked against respondent | 4 |
| Number of ballots segregated and not counted | 0 |

**2751-11-R:** Scott Andrew Zwaniga (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Ontario Lottery and Gaming Corporation (OLG) (Intervener) *(Dismissed)*

## REFERRAL FROM MINISTER (SECTION 115)

**4302-10-M:** Best Concrete Forming Inc. (Applicant) v. Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council on behalf of its Local Unions 183, 247, 493, 506, 527, 607, 625, 837, 1036, 1059, 1081 and 1089 (Respondent) *(Terminated)*

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0314-09-U:** Sam Macri, Gurnam Chokar, Bikramjit Brar (Applicant) v. Teamsters Local Union No. 419 (Respondent) v. Cara Operations Limited (Intervener) *(Withdrawn)*

**3721-09-U:** United Food and Commercial Workers Canada Union, Local 1000A (Applicant) v. Soya World Inc. (Respondent) v. Cambridge Fine Foods Ltd.1 (Intervener) *(Withdrawn)*

**3908-09-U:** Albert Tsoi (Applicant) v. UNITE HERE, Local 75 (Respondent) v. Hilton Toronto (Intervener) *(Dismissed)*

**3968-09-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. M.G.R. Contracting and Maintenance Ltd. and, Graziano Roti (Respondent) *(Withdrawn)*

**0451-10-U; 0452-10-U:** Isaac Dyck, Francesco Gabriel, Dave Gifford, Robert Gilbert, Damian Green, John Jawbone, Jordan Kuzub, Cathy Mason, Mel McKinnon, Jeff Mullin, Mark Patterson, Nick Peters, James Spence, Dwayne VanEgmond, Ross Townsend, Stephen Virag and Ken Wallis (Applicant) v. Sheet Metal Workers' International Association, Local 51 (Respondent) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener); Isaac Dyck, Francesco Gabriel, Dave Gifford, Robert Gilbert, Damian Green, John Jawbone, Jordan Kuzub, Cathy Mason, Mel McKinnon, Jeff Mullin, Mark Patterson, Nick Peters, James Spence, Dwayne VanEgmond, Ross Townsend, Stephen Virag and Ken Wallis (Applicant) v. Sheet Metal Workers' International Association, Local 51, Trudel & Sons Roofing Ltd. (Respondent) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener) *(Terminated)*

**0599-10-U:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bermingham Construction Limited (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council, Yvan Cote (Intervener) *(Dismissed)*

**0918-10-U:** Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. V.I.E.W. Systems Inc. (Respondent) *(Withdrawn)*

**0938-10-U:** United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. VanderWal Homes & Commercial Group (Respondent) *(Granted)*

**1308-10-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Nipissing First Nation (Respondent) *(Dismissed)*

**1572-10-U:** Orazio Baldessara (Applicant) v. Communication, Energy & Paperworkers' Union Local 1144 (Respondent) v. Hilroy-Meadwestvaco Canada L.P. (Intervener) *(Dismissed)*

**1629-10-U:** Donald A. Williams (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

**1738-10-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. E.T. Construction Inc. and/or Construction E.T. Inc. (Respondent) *(Terminated)*

**1829-10-U:** Labourers' International Union of North America, Local 625 (Applicant) v. Alpine Construction (Windsor) Inc. (Respondent) *(Granted)*

**1950-10-U:** United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Sobeys Inc. (Respondent) *(Granted)*

**2296-10-U:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-1000 (Applicant) v. Commonwealth Plywood Company Limited (Respondent) *(Terminated)*

**2472-10-U:** Cathy Leinbach, Rowena Maclure, Christina Yung, Elaine Choptiany, Lucy Somer, Bernadette Millette, Deborah Harding, Julie Choo Lee, Dianne Bales, Mona Sidler-Hosios, Judy Shasko, Deborah Hodges, Jane Boorman, Pauline Dekker, Jan Kellar, Allison Ritzmann, Diana Lang, Patty Nixon, Natalie Bahry Kozak, Emily Marshall, Nancy, Dane Lynn Torrie, Lucy Weston, Fumiko Takada, Sarah Collinge, Kate Brown, Sue Riley, Cathy O'Leary, Vicky Prooday (Applicant) v. Ontario Secondary School Teachers' Federation/ Federation des enseignantes-enseignants des écoles secondaires de l'Ontario (Respondent) v. Toronto District School Board (Intervener) *(Withdrawn)*

**2550-10-U:** Liliana Almeida (Applicant) v. Universal Workers Union Labourers' International Union of North America, Local 183, Durval Terceira, Daniel Avero, Jaime Melo, Gaetano Strazzanti, Michael O'Brien, John Poirier and John Cautillo, Labourers Local 183 Training & Rehabilitation Fund (Respondent) *(Withdrawn)*

**2760-10-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Direct Traffic Management Inc. and, Peter Wehmeyer (Respondent) *(Dismissed)*

**3065-10-U:** Tiziano Scotta (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

**3066-10-U:** Tiziano Scotta (Applicant) v. Toronto Transit Commission (Respondent) *(Dismissed)*

**3413-10-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Bunge Canada (Respondent) *(Terminated)*

**3839-10-U:** United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. City of Hamilton (Respondent) *(Withdrawn)*

**3981-10-U:** Ontario English Catholic Teachers' Association (Applicant) v. St. Clair Catholic District School Board (Respondent) *(Withdrawn)*

**0230-11-U:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 923606 Ontario Inc. o/a Amy-Co Contracting (Respondent) *(Withdrawn)*

**0271-11-U:** Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. World Journal (Daily) News Inc. (Respondent) *(Withdrawn)*

**0528-11-U:** Hubert P. Gomes (Applicant) v. UNITE HERE Local 75 (Respondent) v. The Fairmont Royal York (Intervener) *(Dismissed)*

**1098-11-U:** Remedios G. Santos (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) *(Dismissed)*

**1100-11-U:** Bulus Gambo (Applicant) v. Public Service Alliance of Canada (Respondent) *(Withdrawn)*

**1173-11-U:** Brick and Allied Craft Union of Canada, Local 28 (Applicant) v. Calabria Cement & Tile (Respondent) *(Withdrawn)*

**1179-11-U:** Lorraine Beaudoin (Applicant) v. Association of Professional Student Services Personnel (Respondent) v. District School Board of Niagara (Intervener) *(Withdrawn)*

**1191-11-U:** Curt Hanninger (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Casey House Hospice Inc. (Intervener) *(Withdrawn)*

**1221-11-U**: Sylvie Francoeur (Applicant) v. ESSA Staff Union (ESU) (Respondent) v. Canadian Association of Professional Employees (Intervener) *(Withdrawn)*

**1458-11-U:** International Brotherhood of Electrical Workers, Construction Council of Ontario (Applicant) v. Northwind Solutions Corp. (Respondent) *(Endorsed Settlement)*

**1514-11-U:** Silvia Sanchez and Simar Roofing Ltd. (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Dominion Sheet Metal & Roofing Works (Intervener) *(Withdrawn)*

**1559-11-U:** Margarita Arias (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Dismissed)*

**1684-11-U:** Suzanne Robertson (Applicant) v. CUPE Local 101 (Respondent) v. The Corporation of the City of London (Intervener) *(Dismissed)*

**1703-11-U:** Teamsters Local Union No. 879 (Applicant) v. Halton Recycling Ltd. (Respondent) *(Withdrawn)*

**1780-11-U:** Harry D Sharma (Applicant) v. United Food and Commercial Workers Union (Respondent) v. Associated Brands Holdings Ltd. Partnership (Intervener) *(Dismissed)*

**1831-11-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Hamburg Honda (Respondent) *(Withdrawn)*

**1850-11-U:** Ontario Workers' Union (Applicant) v. Service Employees International Union, Local 1 Canada and, Humber River Regional Hospital (Respondent) *(Dismissed)*

**1861-11-U; 2329-11-U:** Ontario Nurses' Association (Applicant) v. Hampton Terrace Care Centre (Respondent) *(Withdrawn)*

**1863-11-U:** Paul Hunter (Applicant) v. Amalgamated Transit Union, Local 1587 (Respondent) v. Metrolinx (Intervener) *(Withdrawn)*

**1950-11-U:** Christopher Haddad (Applicant) v. Retail, Wholesale & Department Store Union District Council of the United Food and Commercial Workers International Union (Respondent) v. Uptown Cleaners c.o.b. Sudbury Steam Laundry (Intervener) *(Withdrawn)*

**2024-11-U:** Eric Lloyd Fletcher (Applicant) v. Local 353 International Brotherhood of Electrical Workers AFL-CIO-CLC (IBEW) (Respondent) *(Withdrawn)*

**2061-11-U; 2064-11-U:** Houman Hossein Zadeh (Applicant) v. York University (Respondent) v. Canadian Union of Public Employees and its Local 1356 (Intervener); Houman Hossein Zadeh (Applicant) v. Canadian Union of Public Employees and its Local 1356 (Respondent) v. York University (Intervener) *(Dismissed)*

**2274-11-U; 2391-11-U:** Amalgamated Transit Union, Local 846 (Applicant) v. Canadian Red Cross Society (Respondent) *(Dismissed)*

**2345-11-U:** Canadian Union of Public Employees (Applicant) v. University of St. Michael's College (Respondent) *(Withdrawn)*

**2391-11-U:** Amalgamated Transit Union, Local 846 (Applicant) v. Canadian Red Cross Society (Respondent) *(Dismissed)*

**2469-11-U:** Christian Labour Association of Canada (Applicant) v. Moulure Alexandria Moulding Inc., owned and operated by Alexandria Sash & Door Company Limited (Respondent) *(Withdrawn)*

**2679-11-U:** Labourers' International Union of North America, Local 506 (Applicant) v. Eastern Power Developers Corp., John Flynn (Respondent) *(Withdrawn)*

**2754-11-U:** Czeslawa Wasik (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 414 (Respondent) *(Dismissed)*

## APPLICATION FOR INTERIM ORDER

**2259-11-M:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 180 University Management Inc. and/or, Westbank Projects Corp. and/or, Peterson Investment Group Inc., Peterson Investment (Spruceland) Ltd. (Respondent) v. Mitchison Arts and LBM Construction Specialities, Hunt Management Groupe Synergie Inc. carrying on business as Hunt Personnel (Intervener) *(Granted)*

**2364-11-M:** Derek Quesnel (Applicant) v. Corporation of the City of North Bay (Respondent) *(Withdrawn)*

**2474-11-M:** Westendorp Demolition & John Westendorp Enterprises Inc. (Applicant) v. Labourers' International Union of North America, Local 247 (Respondent) *(Granted)*

**2568-11-M:** Joseph Walker (Applicant) v. Labourers International Union of North America, Local 183 (Respondent) *(Dismissed)*

**2645-11-M:** PLS Landscaping and Excavation Ltd. (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Dismissed)*

**2647-11-M:** International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping and Excavation Ltd. (Respondent) *(Dismissed)*

## FINANCIAL STATEMENT

**1957-11-M:** José Amilcar Escobar (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) *(Dismissed)*

## JURISDICTIONAL DISPUTES

**3895-10-JD:** Brick and Allied Craft Union of Canada, Local 2 and International Union of Bricklayers and Allied Craftworkers, Local 2 (Applicant) v. Brick and Allied Craft Union of Canada, Local 31 and International Union of Bricklayers and Allied Craftworkers, Local 31, and, Limen Group Ltd. (Respondent) v. Masonry Industry Employers' Council of Ontario/ Ontario Masonry Contractors' Association - BACU Bargaining Committee, Terrazzo, Tile & Marble Guild of Ontario, Inc., Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 506 (Intervener) *(Granted)*

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**1551-11-M:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and Local 240 (Applicant) v. The Windsor Star, Division of Postmedia Network Inc. (Respondent) *(Withdrawn)*

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**0956-11-OH:** K. Annette Harper (Applicant) v. Ludlow Technical Products Canada Ltd. (cob Covidien) (Respondent) *(Dismissed)*

**1160-11-OH:** Suely Anunciacao (Applicant) v. Working Women Community Centre (Respondent) *(Withdrawn)*

**1319-11-OH:** Evangeline Cayanan (Applicant) v. The Big Apple Limited (Respondent) (Endorsed Settlement)

**1321-11-OH:** Wilven Montejo (Applicant) v. The Big Apple Limited (Respondent) *(Endorsed Settlement)*

**1323-11-OH:** Eric Caparros (Applicant) v. The Big Apple Limited (Respondent) *(Endorsed Settlement)*

**2127-11-OH:** Zhong Cheng (Applicant) v. Huawei Technologies Canada Co., Ltd. (Respondent) *(Dismissed)*

**2170-11-OH:** Tina McNish (Applicant) v. Canada Car Mart Inc. (Respondent) *(Withdrawn)*

**2192-11-OH:** Joseph S. Pace (Applicant) v. Sigma Convector (Respondent) *(Withdrawn)*

**2365-11-OH:** Derek Quesnel (Applicant) v. Corporation of the City of North Bay (Respondent) *(Withdrawn)*

**2525-11-OH:** Neil A. Lemieux (Applicant) v. Richards-Wilcox Custom Systems - Crane (Respondent) v. Arcelormittal Dofasco Inc. (Intervener) *(Withdrawn)*

**2572-11-OH:** Daniel Lewis (Applicant) v. Harvey's Restaurant (Respondent) *(Terminated)*

**2585-11-OH:** Volodymyr Buncha (Applicant) v. St. Helen's Meat Packers Limited (Respondent) *(Dismissed)*

## CONSTRUCTION INDUSTRY GRIEVANCES

**0873-Y7-G; 3027-08-G**: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Ottawa Business Interiors Ltd. (Respondent) *(Dismissed)*

**2694-10-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Ereddia Concrete Walls Ltd. and, E.D.S. - Ereddia Disposal Services Limited (Respondent) *(Withdrawn)*

**2869-10-G**: International Union of Elevator Constructors, Local 96 (Applicant) v. Schindler Elevator Corp. (Respondent) *(Withdrawn)*

**0277-11-G**: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2183052 Ontario Corp. and, B-Style Concrete Group Corp. and, Abco One Corporation (Respondent) *(Withdrawn)*

**0636-11-G:** Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America Local 183 Masonry Council of Unions Toronto and Vacinity (Applicant) v.

Sunpark Masonry Inc., Parkview Masonry Ltd., Sanpak Inc., Joao Paulo Da Costa Correia o/a Sanpak Inc. (Respondent) *(Granted)*

**1532-11-G**: International Brotherhood of Electrical Workers Electrical Power Council of Ontario (Applicant) v. Comstock Canada Ltd. (Respondent) *(Withdrawn)*

**1688-11-G**: Canadian Union Of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

**1736-11-G**: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jesse Vock c.o.b. as Straight Line Forming and Crane Rental (An Unregistered Business Name), Jesse Vock c.o.b. as JCF (Respondent) *(Granted)*

**1951-11-G**: Labourers' International Union of North America, Local 1059 (Applicant) v. Bruce Power LP (Respondent) *(Terminated)*

**2094-11-G; 2279-11-G; 2422-11-G**: International Union of Painters and Allied Trades, Local 1819 (Glaziers) (Applicant) v. 1440842 Ontario Inc. o/a KYIV Architectural Metals (Respondent) ; International Union of Painters and Allied Trades, Local 1795 (Glaziers) (Applicant) v. 1440842 Ontario Inc. o/a KYIV Architectural Metals (Respondent) *(Granted)*

**2110-11-G**: IBEW Construction Council of Ontario (Applicant) v. Northwind Solutions Corp., Northwind Solutions LP, Northwind Turbine Installations Inc., H.B. White Canada Corp. (Respondent) *(Endorsed Settlement)*

**2150-11-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. M & I Aluminum Ltd. (Respondent) *(Endorsed Settlement)*

**2175-11-G; 2177-11-G**: Brick and Allied Craft Union of Canada, Local 28 (Applicant) v. Calabria Cement & Tile (Respondent) *(Withdrawn)*

**2248-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Canadian Woodland Contractors Inc. (Respondent) *(Endorsed Settlement)*

**2277-11-G; 2460-11-G**: Labourers' International Union of North America, Local 1089 (Applicant) v. Traugott Building Contractors Inc. (Respondent) *(Withdrawn)*

**2303-11-G; 2304-11-G**: Carpenters' District Council of Ontario (CDC), United Brotherhood of Carpenters and Joiners of America (Applicant) v. Hydro One, The Electrical Power Systems Construction Association (Respondent) *(Withdrawn)*

**2316-11-G**: Labourers' International Union of North America, Local 506 (Applicant) v. Limen Masonry (2003) Inc. (Respondent) *(Withdrawn)*

**2325-11-G**: Brick and Allied Craft Union of Canada, Local 31 (Applicant) v. Castlewall Marble and Tile Inc. (Respondent) *(Withdrawn)*

**2333-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Classic Excavating Inc. (Respondent) *(Withdrawn)*

**2355-11-G**: Sheet Metal Workers' International Association, Local 537 (Applicant) v. KEM Khider Electromechanical (Respondent) *(Endorsed Settlement)*

**2367-11-G**: Labourers' International Union of North America, Local 625 (Applicant) v. Marathon Drilling Co. Ltd. (Respondent) *(Withdrawn)*

**2375-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Centennial Construction & Contracting (Niagara) Inc. (Respondent) *(Granted)*

**2401-11-G**: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1065716 Ontario Limited c.o.b. as Excel Contracting (An Expired Business Name) (Respondent) *(Granted)*

**2403-11-G**: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. BSG Services Inc. (Respondent) *(Withdrawn)*

**2404-11-G:** The Carpenters' District Council of Ontario, Local Union 93 (Applicant) v. Presto Construction Inc. (Respondent) *(Granted)*

2406-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. Wilcox Door Service Inc. (Respondent) *(Withdrawn)*

**2407-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Total Siteworks Inc. (Respondent) *(Granted)*

**2408-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Total Siteworks Inc. (Respondent) *(Granted)*

**2418-11-G**: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Claude Edward Copeland and Jason Richard Labre c.o.b. as Instal Contracting (Respondent) *(Endorsed Settlement)*

**2419-11-G**: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Aluminum Pro Inc. (Respondent) *(Granted)*

**2426-11-G**: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cro Aluminum Inc. (Respondent) *(Endorsed Settlement)*

**2431-11-G**: International Union Of Operating Engineers, Local 793 (Applicant) v. Xline Concrete Pumping Services Ltd. (Respondent) *(Granted)*

**2442-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Winona Wood Limited (Respondent) *(Endorsed Settlement)*

**2482-11-G**: Brick and Allied Craft Union of Canada Local 2 (Applicant) v. Canex Masonry Ltd. (Respondent) *(Endorsed Settlement)*

**2495-11-G**: Labourers' International Union of North America, Local 625 (Applicant) v. Marathon Drilling Co. Ltd. (Respondent) *(Withdrawn)*

**2533-11-G**: Labourers' International Union of North America, Ontario Provincial District Council, and Labourers' International Union of North America, Local 1059 (Applicant) v. Crossby Dewar Inc. (Respondent) *(Withdrawn)*

**2537-11-G**: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Sutherland-Schultz Ltd. (Respondent) *(Withdrawn)*

**2563-11-G**: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Mack Mechanical Solutions Inc. (Respondent) *(Withdrawn)*

**2569-11-G**: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Donscape Landscaping Services (Respondent) *(Withdrawn)*

**2573-11-G**: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Expo Forming Inc. (Respondent) v. The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (Intervener) *(Granted)*

**2574-11-G:** The Formwork Council of Ontario and Labourers' International Union of North America, Local 1059 (Applicant) v. JCF (Respondent) *(Granted)*

**2584-11-G**: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Restoration Environmental Contractors, a division of 836171 Ontario Inc. (Respondent) *(Granted)*

**2588-11-G**: Labourers' International Union of North America, Local 837 (Applicant) v. Bravo Cement Contracting (Hamilton) Inc., 829194 Ontario Limited, 493672 Ontario Limited (Respondent) *(Granted)*

**2589-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Ciro Excavating & Grading Ltd. (Respondent) *(Granted)*

**2593-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Rainone Construction (2007) Limited (Respondent) *(Granted)*

**2594-11-G**: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. CC Group Contracting Inc. (Respondent) *(Granted)*

**2608-11-G**: Labourers' International Union of North America, Local 506 (Applicant) v. Eastern Power Developers Corp. (Respondent) *(Withdrawn)*

**2612-11-G**: Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Associations of the United States and Canada, Local Union 598 (Applicant) v. Paclaw Building Restoration Inc. (Respondent) *(Granted)*

**2626-11-G**: Sheet Metal Workers' International Association, Local 30 (Applicant) v. YGS Glazing Ltd. (Respondent) *(Granted)*

**2627-11-G**: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Taras Electric Inc. (Respondent) *(Withdrawn)*

**2639-11-G**: International Union of Painters and Allied Trades, Local 1795 (Glaziers) (Applicant) v. Flynn Canada Ltd. (Respondent) *(Withdrawn)*

**2643-11-G:** Masonry Industry Employers' Council of Ontario/ Ontario Masonry Contractors' Association - BACU Bargaining Committee (Applicant) v. Canex Masonry Ltd. (Respondent) *(Granted)*

**2644-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. E.M.C.S. Controls Inc. (Respondent) *(Withdrawn)*

**2677-11-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Neutron Electrical Contracting Inc. (Respondent) *(Withdrawn)*

**2682-11-G:** Carpenters' District Council of Ontario, Local 2486 (Applicant) v. Bondfield Construction Ltd. (Respondent) *(Withdrawn)*

**2686-11-G:** The International Union of Painters and Allied Trades, Local Union 1904 (Applicant) v. Conrad Painting Limited (Respondent) *(Granted)*

**2694-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. C.C. Construction Site Service Group Inc. (Respondent) *(Granted)*

**2709-11-G**: International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Aecon Industrial, a division of Aecon Group Inc. (Respondent) *(Withdrawn)*

**2732-11-G**: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. B S G Systems Group Inc. (Respondent) *(Granted)*

**2739-11-G**: Labourers' International Union of North America, Local 247 (Applicant) v. Ross Clair Contractors (Respondent) *(Withdrawn)*

**2747-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Concord Earthmoving Limited (Respondent) *(Granted)*

**2768-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. Stellar Paving Company Ltd. (Respondent) *(Granted)*

**2793-11-G**: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Edward Kosciuch c.o.b. as All City Drywall (Respondent) *(Granted)*

## APPEALS - EMPLOYMENT STANDARDS ACT

**3700-09-ES**: 6353193 Canada Inc. o/a Subway Sandwiches #22248 (Applicant) v. Tremaine Whynes, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3978-09-ES**: Samuel Meda (Applicant) v. Quiktemp Inc. and, Director of Employment Standards (Respondent) *(Granted)*

**0158-10-ES**: 819127 Ontario Limited o/a Gino's Pizza Bar & Grill (Applicant) v. Conroy Richard and, Director of Employment Standards (Respondent) *(Granted)*

**1045-10-ES:** Joseph Aarrestad (Applicant) v. E & G Custom Sawing Ltd., Director of Employment Standards (Respondent) *(Dismissed)*

**1478-10-ES**: Ali Tarbhai (Applicant) v. Grey Power Insurance Brokers Inc. and, Director of Employment Standards (Respondent) *(Granted)*

**1631-10-ES:** Jamil Syed (Applicant) v. Brenmar Heating & Air Conditioning Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1930-10-ES**: Carl D. Wall (Applicant) v. Credit Valley Certigard Ltd., Director of Employment Standards (Respondent) *(Granted)*

**1977-10-ES**: Fundamental Assessment Centre Inc. (Applicant) v. Surinder Briaana and, Director of Employment Standards (Respondent) *(Dismissed)*

**2512-10-ES;** 2526-10-ES: École de langues ABCE Inc./ ABCE Language School Inc. (Applicant) v. Kamel Bourenane et, Le directeur des normes d'emploi (Respondent) ; École de langues ABCE Inc./ ABCE Language School Inc. (Applicant) v. Denis Fugère et, Le directeur des normes d'emploi (Respondent) *(Withdrawn)*

**2520-10-ES**: Alliance iCommunications Inc. (Applicant) v. Lucy Richard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2647-10-ES**: Logic 2000 Incorporated (Applicant) v. Michel Montigny and, Director of Employment Standards (Respondent) *(Terminated)*

**3326-10-ES**: Marwood Metal Fabrication Limited (Applicant) v. Michael Parsons and, Director of Employment Standards (Respondent) *(Dismissed)*

**3604-10-ES**: Echo Solutions Home Services Inc. (Applicant) v. Kenneth Tyhurst, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3783-10-ES**: Maden Industrial Ltd (Applicant) v. Kevin McCarthy, and Director of Employment Standards (Respondent) *(Withdrawn)*

**3906-10-ES**: Scott Moroziuk (Applicant) v. 1083202 Ontario Inc. o/a Carpcon Construction and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**3984-10-ES**: Mega City Auto Recycling Inc. (Applicant) v. Chris Hunt and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4018-10-ES**: Uday Kapure o/a Jugo Juice (Applicant) v. Kathie Hill and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4111-10-ES**: R.W. Tomlinson Limited (Applicant) v. David St. Michael and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4165-10-ES**: GCAT Group Inc. (Applicant) v. Lisa Toakley and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4177-10-ES**: ABC Cork Corporation (Applicant) v. Kerri Innis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**4218-10-ES**: Riccardo Filella operating as Laseright (Applicant) v. Leonard Pidgeon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0161-11-ES; 0163-11-ES; 0164-11-ES; 0166-11-ES; 0167-11-ES; -168-11-ES; 0171-11-ES; 0173-11-ES; 0175-11-ES; 0176-11-ES; 0177-11-ES; 0178-11-ES; 0179-11-ES; 0180-11-ES; 0181-11-ES; 0182-11-ES; 0183-11-ES; 0184-11-ES; 0185-11-ES; 0186-11-ES; 0187-11-ES; 0188-11-ES; 0189-11-ES; 0190-11-ES; 0191-11-ES; 0192-11-ES; 0193-11-ES; 0194-11-ES; 0195-11-ES; 0196-11-ES; 0197-11-ES; 0198-11-ES; 0199-11-ES; 0200-11-ES; 0201-11-ES; 0202-11-ES; 0203-11-ES; 0204-11-ES; 0205-11-ES**: Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Donna Lance and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Michael Stalikie and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Dennis Lewis and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Mable Turcotte and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Dennis Cliché and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Larry Tackney and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Rosemarie Stewart and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Gilbert Levean and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. David Turcotte and, Director of Employment Standards

(Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Donna Turcotte and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. David Weisenberg and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Barry Prescott and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Mark Prescott and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Verner Schruder and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Gilles Chaput and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Guy Lapierre and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Janet Lapierre and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Moses Pelletier and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Matthew Rapin and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Patricia Lapierre and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Wayne Prescott and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Daniel Brotton and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Carolyn Kuehl and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Brian Carnegie and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Norman Lewis and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Heather Mitton and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Tom Mulligan and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. David Dick and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Geraldine Gagnon and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. John Gorgerat and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Colleen Gruntz and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Boyd Shields and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Michael Silke and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Rodney Hoffman and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Michael Kreiger and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Kelly Noakes and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Bonnie Carnegie and, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Bevet Brazeau, Director of Employment Standards (Respondent); Commonwealth Plywood Co. Ltd. - La Compagnie Commonwealth Plywood Ltée (Applicant) v. Ian Ness and, Director of Employment Standards (Respondent) *(Granted)*

**0320-11-ES**: Respiron Care-Plus Inc. (operating as "Closing the Gap Healthcare Group") (Applicant) v. Laurraine Hammersley, Amanda Baratta, Pat Delaney, Darlene Boka, Lori Bryson, Corrine Budgell and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0325-11-ES**: Khalid Elmalih (Applicant) v. Club de Voyages Aventure (Ottawa) Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

**0406-11-ES**: 1717138 Ontario Inc. o/a Active Lock & Safe (Applicant) v. Brad Pfrimmer and, Director of Employment Standards (Respondent) *(Dismissed)*

**0481-11-ES**: 772314 Ontario Inc. o/a Sookram Bus Lines (Applicant) v. Darrin Gifford and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0504-11-ES**: Cathy A. Reese (Applicant) v. Dr. Michael Bencak Dentistry Professional Corporation and, Director of Employment Standards (Respondent) *(Dismissed)*

**0508-11-ES**: David A. Westlake (Applicant) v. Lakeshore Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0511-11-ES**: Ilona Skeba, a director of 1521154 Ontario Inc. o/a East Side Mario's (Applicant) v. Kyle Grady and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0512-11-ES**: Ilona Skeba, a director of 1521154 Ontario Inc. o/a Eastside Mario's (Applicant) v. Chelsea Wigwood and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0513-11-ES**: Ilona Skeba, a director of 1521154 Ontario Inc. o/a Eastside Mario's (Applicant) v. Katharine Wright and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0514-11-ES**: 1188610 Ontario Ltd operating as Nipigon Esso (Applicant) v. Margaret Thompson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0530-11-ES**: Karen Rowen (Applicant) v. D & M Steel Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0581-11-ES**: Boardwalk Rental Communities (Applicant) v. Lawrence W. Parman and, Director of Employment Standards (Respondent) *(Terminated)*

**0677-11-ES; 0729-11-ES**: 1673810 Ontario Inc. operating as Ackewance Exploration and Services (Applicant) v. Dolores Anderson and, Director of Employment Standards (Respondent); 1673810 Ontario Inc. operating as Ackewance Exploration and Services (Applicant) v. Agnes Bergman and, Director of Employment Standards (Respondent) *(Withdrawn)*

**0686-11-ES**: Coco Paving Inc. (Applicant) v. Adam Goodbrand and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0768-11-ES**: New Horizons Car & Truck Rentals Ltd. o/a Discount Car and Truck Rentals (Applicant) v. Jason McLennan and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0780-11-ES**: 1742150 Ontario Inc. o/a Salon M (Applicant) v. Giuseppina Zumpano and, Director of Employment Standards (Respondent) *(Granted)*

**0833-11-ES**: Accu-Staff Resource Systems Enterprises, Ltd. (Applicant) v. Jienping Mu and, Director of Employment Standards (Respondent) *(Terminated)*

**0836-11-ES**: Accu-Staff Resource Systems Enterprises, Ltd. (Applicant) v. Sandra Regnier and, Director of Employment Standards (Respondent) *(Terminated)*

**0926-11-ES**: Pablo Tancredi Bayona (Applicant) v. Fabian Paez o/a Service Paez and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**0933-11-ES**: Building Blocks Academy Inc. (Applicant) v. Jean Berezowski, Director Of Employment Standards (Respondent) *(Endorsed Settlement)*

**0949-11-ES**: Badema Mulaosmanovic (Applicant) v. Accu-Staff Resources Systems Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

**0975-11-ES**: 2233088 Ontario Inc. o/a Napa Grille & Wine Den (Applicant) v. Ray Isbister and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1003-11-ES**: Just Energy Corp. (Applicant) v. Olga Angel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1085-11-ES**: 1664374 Ontario Inc. operating as Mane Society Salon and Spas (Applicant) v. Irina Sidorova and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1146-11-ES**: In Touch Retirement Living for Vegetarians/Vegan Inc. (Applicant) v. Leticia Bermudez, Arlene Estrella, Christina Caproiu, Julieta Dacalos, Dawn Morgan, Leta Tabidze and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1147-11-ES; 1149-11-ES**: Leticia Bermudez (Applicant) v. In Touch Retirement Living for Vegetarians/Vegan Inc. and, Director of Employment Standards (Respondent); Julieta Dacalos (Applicant) v. In Touch Retirement Living for Vegetarians/Vegan Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1215-11-ES**: Michael Leggieri (Applicant) v. Steven Foster o/a Lucky Strike Toronto, L.L.C. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1243-11-ES; 2527-11-ES**: Durham District School Board (Applicant) v. Darlene Sasseville and, Director of Employment Standards (Respondent); Durham District School Board (Applicant) v. Susan Vogl Blakelock and, Director of Employment Standards (Respondent) *(Terminated)*

**1250-11-ES:** 2216855 Ontario Inc. operating as Airon Steels (Applicant) v. Ting Li, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1278-11-ES**: Jeff Bolger (Applicant) v. Shield Fire Protection Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1318-11-ES**: Evangeline Cayanan (Applicant) v. The Big Apple Limited, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1320-11-ES**: Wilven Montejo (Applicant) v. The Big Apple Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1322-11-ES**: Eric Caparros (Applicant) v. The Big Apple Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1409-11-ES**: Patrick McGinn (Applicant) v. Satcon Power Systems Canada Ltd. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1412-11-ES**: 1807979 Ontario Inc. o/a United Supermarket (Applicant) v. Jui-Hua Hsu, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1474-11-ES**: 118701 Ontario Inc. o/a Carroll's Service (Applicant) v. Donald Mosher and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1513-11-ES**: Andy Rotsma (Applicant) v. Community Living Oakville and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1596-11-ES**: 1807979 Ontario Inc. o/a United Supermarket (Applicant) v. Peter Li, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1597-11-ES**: 1807979 Ontario Inc. o/a United Supermarket (Applicant) v. Nhu Thuy Tran, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1598-11-ES**: 1807979 Ontario Inc. o/a United Supermarket (Applicant) v. Yin-Chou Chen, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1599-11-ES**: 1807979 Ontario Inc. o/a United Supermarket (Applicant) v. Li Yun Huang, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1607-11-ES**: Grandview Sales & Distribution Ltd. Operating as Canadian Tire and (Applicant) v. Stephanie Thomas and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1625-11-ES**: ATC Electric Ltd. (Applicant) v. Tyson A Cote and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1635-11-ES**: Maija Lindholm-Morissette (Applicant) v. Sohi Holdings Inc. o/a Taco Time (Store ID 6204) and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1662-11-ES**: Vilma E. Solis (Applicant) v. Sharron Robert and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1702-11-ES**: BRT Precision Gun Drills North America Ltd and Nova International Machine and Tool Company Limited (Applicant) v. Bob P. Turosky and, Director of Employment Standards (Respondent) *(Terminated)*

**1722-11-ES**: Tony Heim, a director of Fortis Pizza (Applicant) v. Carla Hiebert and, Director of Employment Standards (Respondent) *(Dismissed)*

**1728-11-ES**: Rita Tatangelo (Applicant) v. Avelina Palicpic and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1738-11-ES**: Kwik Save Courier Incorporated (Applicant) v. James Lovatsis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1750-11-ES; 1751-11-ES**: RYT Products Ltd. (Applicant) v. Naomi Levy and, Director of Employment Standards (Respondent); RYT Products Ltd. (Applicant) v. Leslie Fox and, Director of Employment Standards (Respondent) *(Dismissed)*

**1774-11-ES**: Michael Ostroff, a Director of 1727651 Ontario Ltd. o/a A Legal Services Group (Applicant) v. Shui-Chun Lui and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1857-11-ES**: Monika Venier (Applicant) v. 1240181 Ontario Inc. o/a Corner Décor & More Benjamin Moore/At Your Service and, Director of Employment Standards (Respondent) *(Withdrawn)*

**1871-11-ES**: Bee Eye & Gee Oh Inc. o/a Uncle Sam's Bingo (Applicant) v. Kathleen Barnhardt and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1877-11-ES**: 1594058 Ontario Ltd. operating as Remark Fresh Markets (Applicant) v. Michael Dunlay, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1912-11-ES**: Accurassay Laboratories Ltd. operating as Accurassay Laboratories (Applicant) v. Destry Curley and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1916-11-ES**: Rinaldo Hair Stylist Limited (Applicant) v. Nelson Renouf and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1932-11-ES**: Gary Allen A Director of 2169125 Ontario Limited (Applicant) v. Paul Allan Lopena, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1943-11-ES**: Angelita Dimaano (Applicant) v. Adel Akhavan & Sahar Amini and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1944-11-ES**: Jeffrey Hosmer, a director of Little Bears Daycare (Applicant) v. Carole Bittorf and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**1945-11-ES**: Jeffrey Hosmer, a director of Little Bears Daycare (Applicant) v. Barbara Naylor and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2011-11-ES**: Shooters Sports Bar Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

**2016-11-ES**: Ghazala Haseen (Applicant) v. 587887 Ontario Limited o/a First Choice Haircutters, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2020-11-ES**: Sheragim Naderi director of Ray Daniel Salon Inc. (Applicant) v. Elena Mokhtargzadeh, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2075-11-ES**: United Professional Services & Consultants (Canada) Ltd. (Applicant) v. Mark Cutajar and, Director of Employment Standards (Respondent) *(Terminated)*

**2086-11-ES**: Moon Kim (Applicant) v. Markham Suites Hotel Limited o/a Hilton Suites Toronto/Markham Conference Centre & Spa, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2098-11-ES**: Tanek Inc. o/a Tim Hortons (Applicant) v. Amy Elliott and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2123-11-ES**: Asad Wali (Applicant) v. Arwin Umali and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2190-11-ES**: Athanasiaus Drug Mart Limited o/a The Medicine Shoppe (Applicant) v. Arlaine Wright-Fitzgibbon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2197-11-ES**: Allseas Fisheries Corp. (Applicant) v. James Cowie and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2219-11-ES**: Collectcents Inc. o/a Credit Bureau of Canada Collections (Applicant) v. Joshua Opatovsky and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2232-11-ES**: VIP Travel of Kanata Ltd. (Applicant) v. Laurie Lyon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2261-11-ES**: Elfa Insurance Services Inc. (Applicant) v. Wai-Ping Tang and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2332-11-ES**: Mohammad Farhan Chaudhary (Applicant) v. Phidel Inc. o/a Phidel Restaurants Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

**2350-11-ES**: Dorothy Yueh (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

**2414-11-ES**: Maria Gallinger (Applicant) v. The Nottinghill Educational Rec Centre Ltd. and, Director of Employment Standards (Respondent) *(Terminated)*

**2435-11-ES:** Chor Yin Ng (Applicant) v. Baycrest Centre for Geriatric Care and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2457-11-ES**: Soungbok Lee (Applicant) v. Shaw Brampton Ltd. and, Director of Employment Standards (Respondent) *(Terminated)*

**2490-11-ES**: Super Daves Superstore Inc. o/a Super Dave's Superstore (Applicant) v. Onur Eren, and Director of Employment Standards (Respondent) *(Terminated)*

**2510-11-ES**: Brydee Consulting Corporation o/a Dragon's Fire Golf Club (Applicant) v. Della Noone-O'Connor and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

**2553-11-ES**: Defilaide Inc. (Applicant) v. Neil Condison and, Director of Employment Standards (Respondent) *(Terminated)*

**2799-11-ES**: M.Y. Home Corporation (Applicant) v. Nicholas Markusic and, Director of Employment Standards (Respondent) *(Terminated)*

## APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

**2249-10-HS**: Ministry of Community Safety and Correctional Services (Applicant) v. Ontario Public Service Employees Union, Deborah Marshall, John Howell and, Kelly Sebastian, Inspector (Respondent) *(Withdrawn)*

**2473-10-HS**: Ontario Public Service Employees Union (Applicant) v. Community Safety and Correctional Services Algoma Treatment & Remand Centre and, Mark Grbich, Inspector (Respondent) *(Withdrawn)*

**3188-10-HS**: Headwaters Healthcare Centre (Applicant) v. Ontario Public Service Employees Union and, Colleen Collicutt, Inspector (Respondent) *(Withdrawn)*

**0342-11-HS:** Ontario Public Service Employees Union (Applicant) v. Craigwood Youth Services, Douglas West, Inspector (Respondent) *(Withdrawn)*

**0690-11-HS**: Eacom Timber Corporation (Applicant) v. United Steelworkers - Local 1 - 2010, Allen Armstrong, Inspector (Respondent) *(Withdrawn)*

**0934-11-HS**: Modern Crane Rentals (Applicant) v. International Union of Operating Engineers, Local 793, Steven Papple, Inspector (Respondent) *(Withdrawn)*

**1884-11-HS**: Ajax Pickering News Advertiser (Applicant) v. Caroline Monize and, Melissa Cook, Inspector (Respondent) *(Withdrawn)*

**2301-11-HS**: USW Local 6500 (Applicant) v. Vale and, Shaun Carter, Inspector (Respondent) *(Dismissed)*

**2453-11-HS:** Dufferin Peel Catholic District School Board, Ontario English Catholic Teachers Association (OECTA) (Applicant) v. CUPE Local 1483, CUPE Local 2026, Association of Professional Student Services Personnel, Educational Resource Workers' Association, Ontario Public Service Employees Union, Thomas Mackay, Inspector (Respondent) *(Granted)*

**2590-11-HS**: BFI Canada Inc. (Applicant) v. Michael Rumble, Inspector (Respondent) *(Granted)*

**2635-11-HS**: Par-Pak Limited (Applicant) v. Hardeep Randhawa - Inspector (Respondent) *(Dismissed)*

## PAY EQUITY ACT

**2235-11-PE**: Sandra Kahu (Applicant) v. Walder & McSweeney Contracting Ltd. (Respondent) *(Dismissed)*

## REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

**2298-11-M**: Revera Claremont Retirement Home (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) *(Withdrawn)*

## PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

**0236-09-PS**: Ontario Nurses' Association (Applicant) v. Hamilton Health Sciences (Respondent) v. Ontario Public Service Employees Union, Canadian Union of Public Employees and its Locals 4800 and 778 (Intervener) *(Endorsed Settlement)*

Unit: "Pursuant to the agreement between the parties, the incumbents in the following classifications are eligible to vote: (i) Advance Practice Nurses at both locations which includes the following classifications: the Advanced Practice Nurse, the Advance Practice Nurse - Neo-natal, the Advance Practice Nurse - Intern, the Nurse Practitioner, and the Primary Health Care Nurse Practitioner. There are an estimated 64 incumbents employed in this classification. (ii) Clinical Specialists/Clinical Nurse Specialist and Clinical Nurse Specialist - Intern at both locations. There are an estimated 24 incumbents employed in these classifications." (90 employees in unit)

**1277-09-PS**: Hamilton Health Science Corporation (Applicant) v. Canadian Union of Public Employees, Local 4800 and, Canadian Union of Public Employees, Local 778 (Respondent) v. Ontario Public Service Employees Union, Ontario Nurses' Association (Intervener) *(Endorsed Settlement)*

Unit: "Pursuant to the agreement between the parties, the incumbents in the following classification are eligible to vote: (i) Advance Practice Nurses at both locations which includes the following classifications: the Advanced Practice Nurse, the Advance Practice Nurse - Neo-natal, the Advance Practice Nurse - Intern, the Nurse Practitioner, and the Primary Health Care Nurse Practitioner. There are an estimated 64 incumbents employed in this classification. (ii) Clinical Specialists/Clinical Nurse Specialist and Clinical Nurse Specialist - Intern at both locations. There are an estimated 24 incumbents employed in these classifications." (90 employees in unit)

**2361-10-PS**: Ontario Public Service Employees Union (Applicant) v. Hamilton Health Sciences Corporation and, St. Joseph's Health Centre (Hamilton) (Respondent) v. Ontario Nurses Association, Canadian Union of Public Employees (Intervener) *(Granted)*

Unit: "i. Rehab Therapist/Rehabilitation Therapist/Advanced Rehab Therapist ii. Behaviour Therapist (HHS)/Psychometrist 1 (SJHH)" (employees in unit)

**1466-11-PS**: Canadian Union of Public Employees and its Local 3022 (Applicant) v. Almonte General Hospital (Respondent) *(Withdrawn)*

# APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**2922-09-U:** United Brotherhood of Carpenters and Joiners of America, Local Union 1256 (Applicant) v. United Brotherhood of Carpenters and Joiners of America (Respondent) *(Dismissed)*

**1221-10-U**: Jo-Anne Munday (Applicant) v. Canadian Union of Public Employees (Respondent) *(Dismissed)*

**2921-10-U**: John Walsh (Applicant) v. Maintenance Construction Skilled Trades Council (Respondent) *(Dismissed)*

**4053-10-R**: Sheet Metal Workers' International Association Local 30 (Applicant) v. Total Mechanical Systems Limited and, Total Mechanical Systems (2003) Ltd. (Respondent) *(Dismissed)*

**2001-11-G**: International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping & Excavation Ltd. (Respondent) *(Dismissed)*

**2751-11-R**: Scott Andrew Zwaniga (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Ontario Lottery and Gaming Corporation (OLG) (Intervener) *(Dismissed)*

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